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Mailed: November 19, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Curo Health Services, LLC

Serial No. 98414104

Michele M. Glessner of Moore & Van Allen LLP,
for Curo Health Services, LLC.

Dylan Marie Reynolds, Trademark Examining Attorney, Law Office 130,
John Lincoski, Managing Attorney.

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

Opinion by Wellington, Administrative Trademark Judge:

Curo Health Services, LLC ("Applicant") seeks registration on the Principal Register of the standard character mark ILLUMIA HEALTH for "palliative care services; hospice services; home health care services," in International Class 44.[1] The term HEALTH has been disclaimed.

[1] Application Serial No. 98414104, filed February 21, 2024, based on Applicant's allegation of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act ("the Act") Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion, citing two registrations for the mark ILLUMINA, owned by the same registrant:

> Registration No. 6511719 ("Reg. '719") covers various services in different classes, including "research services, namely, case studies in the fields of and for use in the fields of … medical diagnostics, … clinical diagnostics, medical research, … clinical research, drug development, drug development research, medical laboratory research" in Class 42, and "medical testing for diagnostic or treatment purposes," in Class 44;[2] and
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> Registration No. 6860132 ("Reg. '132") covers various services in different classes, including "medical services," in Class 44.[3]

After the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which the Examining Attorney denied. The appeal then resumed and both Applicant and the Examining Attorney filed briefs. For the reasons explained below, we affirm the refusal.

I. Likelihood of Confusion

Section 2(d) of the Act, in relevant part, prohibits registration of a mark that "so resembles a mark registered in the Patent and Trademark Office … as to be likely, when used on or in connection with the [services] of the applicant, to cause confusion." 15 U.S.C. § 1052(d). To determine whether confusion is likely, we analyze all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours &*

[2] Registration issued on October 5, 2021.

[3] Registration issued on September 27, 2022.

Co., 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*").[4] *See In re Majestic Distilling Co.,* 315 F.3d 1311, 1315 (Fed. Cir. 2003).

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

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) ("[T]he various evidentiary factors may play more or less weighty roles in any particular determination."). Ultimately, however, "[e]ach 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).

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

We focus our likelihood of confusion analysis on the cited Reg. '132, rather than Reg. '719. We do so because Reg. '132 covers "medical services," a broad term not found in Reg. '719, and it presents a stronger basis for finding confusion. *See Sock It to Me v. Fan*, No. 91230554, 2020 TTAB LEXIS 201, at *20-21 (confining likelihood of confusion analysis to most similar pleaded mark); *In re Max Cap. Grp. Ltd.*, No. 77186166, 2010 TTAB LEXIS 1, at *5 (same as to cited registration). If we find there is a likelihood of confusion based on Reg. '132, there is no need for us to consider likelihood of confusion based on Reg. '719. On the other hand, if no confusion is likely based on Reg. '132, then we would not find confusion likely based on Reg. '719. *Sock it to Me*, 2020 TTAB LEXIS 201 at *21. We therefore refer to Reg. '132 as the cited registration and basis for refusal in this decision.

A. Alleged Weakness of Registered Mark ILLUMINA

Before evaluating the similarity of the marks, we address Applicant's assertion that the cited mark, ILLUMINA, is weak based on "seventeen active third-party registrations that share the same 'dominant' syllable as that in the Cited Marks, i.e., marks beginning with ILLUM- or ILLUMI-, registered based on use on the Principal Register by different owners for healthcare related services in Class 44 that are substantially similar to those associated with the [cited registered ILLUMINA mark]."[5] Applicant argues that these "coexisting registrations demonstrate that consumers are already conditioned to differentiate between similar marks for

[5] 6 TTABVUE 8, referring to a list and copies of third-party registrations Applicant attached to its November 30, 2024 Office Action response.

relevant healthcare services—and, therefore, the sources from which the subject services are offered—based on even small differences in the marks."[6] Applicant also relies on the Board's decision in *Carefirst of Md., Inc. v. FirstHealth of the Carolinas, Inc.*, No. 91116355, 2005 TTAB LEXIS 600.

In determining strength or weakness of a mark, we look to see how it is regarded by consumers, both conceptually and commercially.[7] *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength ... and its marketplace strength ...."). "[T]he strength of a mark is not a binary factor" and "varies along a spectrum from very strong to very weak." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (internal citations omitted). *See also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772,* 396 F.3d 1369, 1375 (Fed. Cir. 2005) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003)).

Under the sixth *DuPont* factor, we consider "[t]he number and nature of similar marks in use on similar goods [or services]." *DuPont*, 476 F.2d at 1361. Thus, a party such as Applicant in this case may adduce such probative evidence and demonstrate that a cited mark, or element thereof, has less source-identifying significance. "Evidence of third-party use of similar marks on similar goods [or services] is relevant

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[6] 6 TTABVUE 9.

[7] The fifth *DuPont* factor involves a consideration of any "fame of the prior mark (sales, advertising, length of use)." *DuPont*, 476 F.2d at 1361. This factor is usually neutral in ex parte appeals because the owner of a cited mark is not a party to the appeal, and the Examining Attorney is under no obligation to demonstrate the strength of the cited mark. *In re Integrated Embedded*, No. 86140341, 2016 TTAB LEXIS 470, at *26. Therefore, we consider the fifth factor to be neutral.

to show that a mark is relatively weak and entitled to only a narrow scope of protection." *Apex Bank v. CC Serve Corp.*, _ F.4th _ , 2025 U.S. App. Lexis 24802, at *6 (Fed. Cir. Sept. 25, 2025) (quoting *Palm Bay*, 396 F.3d at 1373). "When a field is crowded with similar marks, the theory is that customers will be more adept at distinguishing marks from each other and are less likely to be confused by similar marks." *Id.* (citing *Juice Generation*, 794 F.3d at 1338). In other words, sufficient probative evidence may indicate that consumers are conditioned to distinguish between marks based on otherwise less significant differences between the marks.

As to the seventeen third-party registrations Applicant submitted, we must point out that these are not actually "evidence of third-party use of the registered marks in the marketplace, for purposes of the sixth *du Pont* factor." *In re Davey Prods. Pty Ltd.*, No. 77029776, 2009 TTAB LEXIS 524, at *22 (citing *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 203-04 (Fed. Cir. 1992)); *see also AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406 (CCPA 1973) ("The existence of these registrations is not evidence of what happens in the market place or that customers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.").

Moreover, many of these registrations offer little insight as to any weakness in the cited mark, ILLUMINA, because they either cover unrelated services or the marks are dissimilar. *See Omaha Steaks Int'l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1325 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus "on goods shown to be similar"); *Specialty*

Brands, Inc. v. Coffee Bean Distribs., Inc., 748 F.2d 669, 675 (Fed. Cir. 1984) (noting that none of third-party registrations submitted to show the number and nature of similar marks on similar goods had the same format or conveyed a similar commercial impression as the marks at issue). Of the third-party registrations, we find the following to be most relevant:[8]

- ILLUME FERTILITY and illume fertility [9]
  (owned by same registrant, FERTILITY disclaimed)
  For: medical services mainly in the field of reproduction and fertility

- ILLUMIDENT[10]
  For: medical information in the field of oral health care

- ILLUMINATE and ILLUMINATE PLASTIC SURGERY[11]
  (owned by same registrant, PLASTIC SURGERY disclaimed)
  For: cosmetic surgery services

- ILLUMIN8[12]
  For: chiropractic services

Although we do not completely discount the remaining third-party registrations, they have less probative value because, again, they are for unrelated services or the marks are dissimilar.[13]

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[8] Copies of registrations attached to Applicant's response filed Nov. 30, 2024, at TSDR 143-159.

[9] Reg. Nos. 7208693 and 7197386.

[10] Reg. No. 7111685.

[11] Reg. Nos. 6472278 and 5664385.

[12] Reg. No. 4934079.

[13] These are: Reg. No. 7434339 (ILLUME for teeth whitening services); Reg. No. 6293927 (ILLUMENTAL for psychiatric services); Reg. No. 6997294 (ILLUME PSYCHOTHERAPY and design, PSYCHOTHERAPY disclaimed, for psychodynamic and behavioral cognitive

It is also worth addressing the *Carefirst* decision, not only because Applicant relies upon it, but also because it offers insight as to when marks, or elements of marks, have a demonstrated weakness in the health care or medical services fields. Specifically, in that case, the Board found no likelihood of confusion exists between the marks CAREFIRST and FIRSTCAROLINACARE based on a record that included "evidence of substantial use of 'care' and 'first' marks and names in the healthcare field." *Carefirst*, 2005 TTAB LEXIS 600, at *59. The evidence included "testimony from twelve third parties that use marks or names comprising, in part, the words 'care' and/or 'first' in the healthcare field." *Id.* at *60. The Board also recognized that "the words 'care' and 'first' are commonly used words with readily recognizable meanings," and with respect to the former term, CARE, "[o]ne can hardly adopt a more highly descriptive/generic term in the healthcare field." *Id.* at *61, 63. Based on the record in that case, the Board determined that "the mere commonality of 'first' and 'care' in the parties' marks (moreover, in the reverse order) is an insufficient basis on which to find likelihood of confusion." *Id.* at *65.

The record and circumstances involving the weakness of the cited mark in this appeal bears little resemblance to those in *Carefirst*. Here, Applicant has adduced

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therapy services); Regs. Nos. 6044151 and 6044164 (ILLUMINATING STORIES and ILLUMINATIONS STORIES HEART-CENTERED HEALING FOR WHOLENESS and design, HEART CENTERED HEALING disclaimed, both owned by same registrant and covering energy healing services, namely, quantum transformation and healing services); Reg. No. 5738043 (ILLUMINATING THE PATH TO BETTER HEALTH for health information services); Reg. No. 5686398 (ILUM INSIGHT for medical information and consultation in fields of disease management and clinical medical management); Reg. No. 5702311 (ILUMAFORMA for plastic surgery services); and Reg. Nos. 6019469 and 5765023 (ILUMYA SUPPORT and ILUMYA SUPPORT LIGHTING THE WAY, disclaimer of SUPPORT, for patient support in connection with pharmaceutical services).

few third-party registrations for marks that are similar to Registrant's ILLUMINA mark and are for related services. We do not have "evidence of substantial use" of the mark, ILLUMINA, or similar marks.

Also, in contrast to the nature of the prior mark in *Carefirst*, CAREFIRST, there is no evidence demonstrating that the cited mark ILLUMINA, or any component part thereof, has any particular meaning in connection with Registrant's or Applicant's services. Indeed, Registrant's mark issued on the Principal Register without any requirement for a showing of acquired distinctiveness in whole or in part under Section 2(f) of the Act, and is thus presumed to be inherently distinctive. *See Tea Bd. of India v. Republic of Tea, Inc.*, No. 91118587, 2006 TTAB LEXIS 330, at *62 (a "mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.").

In sum, the record shows, at best, only a slight weakness in marks beginning with the letters ILLUM- in connection with medical care services, and this is weighed into our analysis involving the similarity of the marks and ultimately our conclusion whether there is likelihood of confusion. Accordingly, the sixth *DuPont* factor weighs slightly against likelihood of confusion.

B. Comparison of the Marks

We turn now to the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay*, 396 F.3d at 1371 (quoting *DuPont*, 476

F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 732 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion."); *In re Inn at St. John's, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13.

Applicant's mark, ILLUMIA HEALTH, and the cited mark, ILLUMINA, are extremely similar in appearance and sound because the first term of Applicant's mark and the registered mark are almost identical, with the only difference being the addition of the penultimate letter N in the registered mark. Indeed, the addition or omission of the letter N may easily go unnoticed visually. Consumers encountering one mark in one setting, are unlikely to notice whether the letter N is present or not upon encountering the other mark in a different setting.

We also point out, as often observed, that it is the first element of a mark that tends to play a dominant role in the mark's commercial impression. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (finding "[t]he identity of the marks' initial two words is particularly significant because consumers typically notice those words first"); *Palm Bay*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, No. 74797, 1988 TTAB LEXIS 60, *8 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). Thus, while the Board may not dissect marks for comparison, finding that the first term in a mark is the most distinctive in both placement and connotation is entirely permissible. *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)

("[T]here 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."). Here, the disclaimed word HEALTH is highly descriptive or generic for Applicant's health care services and, as such, it is much less likely to have source-identifying impact in the minds of consumers. *See Detroit Ath.*, 903 F.3d at 1303 (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997)) (disclaimed matter that is descriptive of or generic for a party's goods is typically less significant or less dominant when comparing marks).

Applicant argues that the marks will be pronounced differently:[14]

> The first word in Applicant's Mark, ILLUMIA, is pronounced "ill-oom-ee-uh." The letter added to the Cited Marks results in a significantly different pronunciation of the Cited Marks, specifically, "ill-oom-in-uh." The likely pronunciations of Applicant's Mark and the Cited Marks are indisputably different, which supports a finding that the marks are distinguishable and not confusingly similar. Moreover, inclusion of the "N" immediately calls to mind the word "illuminate," further differentiating Applicant's Mark from the Cited Marks.

We disagree that ILLUMIA and ILLUMINA will necessarily be pronounced so differently so as to distiguish the marks aurally and avoid a likelihood of confusion. Also, as we often point out and as explained by the U.S. Court of Appeals for the Federal Circuit in *Stoncor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1331-32 (Fed. Cir. 2014), "there is no correct pronunciation of a trademark that is not a recognized word." *Accord Chas. Pfizer & Co., Inc. v. R. J. Moran Co.*, 1960 TTAB LEXIS 105, at *4 (no number in original) (finding that DIABINESE and DIABLAISE

[14] 6 TTABVUE 7. In support, Applicant cites to Internet evidence attached to its Request for Reconsideration, filed February 15, 2025.

"when spoken are substantially similar in sound" because "[t]here is no correct pronunciation of a mark" where the marks are "coined marks having no specific meaning and no established pronunciation"). In other words, this principle may apply to instances involving an invented term devoid of any known or understood meaning. *See, e.g., Inter Ikea Sys. B.V. v. Akea, LLC*, No. 9119652, 2014 TTAB LEXIS 166, at *20 (finding IKEA and AKEA confusingly similar, where "both marks are coined terms that look alike and sound alike" with "no apparent meaning in any language"). Here, both ILLUMIA and ILLUMINA comprise four syllables, and should the first two syllables be accentuated in both terms, the letter N may be less accentuated and go unnoticed to the ear.

In terms of meaning, ILLUMIA and ILLUMINA have no defined meanings. With regard to Applicant's argument that the "inclusion of the N [in the registered mark] immediately calls to mind the word 'illuminate,' further differentiating [the marks]," we disagree that this is a point of difference that helps distinguish the marks in terms of meaning. Rather, both marks are likely to be perceived by consumers as suggestive of the words "illume" or "illuminate," which have the same meaning – to light up. In other words, both marks may conjure the similar meaning that has no demonstrated significance in connection with the services.

In sum, we conclude that the marks ILLUMIA HEALTH and ILLUMINA are overall very similar. Accordingly, the first *DuPont* factor weighs in favor of a conclusion that confusion is likely.

C. Legal Identity of the Services and Channels of Trade

We turn now to the second and third *DuPont* factors, which concern the relatedness of the services and the channels of trade for the services. *DuPont*, 476 F.2d at 1361. In this analysis, we must consider the services as they are identified in Applicant's application and the cited registration. *See Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.,* 918 F.2d 937, 942 (Fed. Cir. 1990)). Further, it is sufficient for a finding of likelihood of confusion as to a class of services in the application if relatedness is established for any one of the recited services within the registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

Finally, and relevant to this appeal, we must give a full sweep to the recitations of services in both the application and cited registration. *See S.W. Mgmt., Inc. v. Ocinomled, Ltd.*, No. 94002242, 2015 TTAB LEXIS 176, *60-61 (where the goods or services in an application or registration are broadly described, they are deemed to encompass all the goods or services of the nature and type described therein) (citation omitted); *In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 TTAB LEXIS 65, *10 ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'").

Here, Applicant's services are "palliative care services; hospice services; home health care services," and the Registrant's services include "medical services."

We agree with the Examining Attorney that the cited registration "uses broad wording … 'medical services,' which encompasses … Applicant's more narrow

'palliative care services,' 'hospice services,' and 'home health care services.'"[15] Indeed, the adjective "medical" is defined as "of, relating to, or concerned with physicians or the practice of medicine," and this is broad enough to describe services such as "palliative care" services (to palliate is defined as "to reduce the violence of a disease") and "health care" services (defined as "efforts made to maintain, restore, or promote someone's physical, mental, or emotional well-being especially when performed by trained and licensed professionals.").[16]

As to the channels of trade, we must presume that these legally identical services will be the same. *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *see also Genesco Inc. v. Martz*, No. 121296, 2003 TTAB LEXIS 123, at *28 ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.").

[15] 8 TTABVUE 13.

[16] We take judicial notice of the definitions of the terms "medical" and "palliate" and "health care" from the online version of THE MERRIAM-WEBSTER DICTIONARY. MERRIAM-WEBSTER.COM DICTIONARY, Merriam-Webster, https://www.merriam-webster.com/dictionary. Accessed 11 Nov. 2025. *See Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 1982 TTAB LEXIS 146, at *7 ("[T]he Board may take judicial notice of use of a term in dictionaries."). *See also B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988) ("dictionaries and encyclopedias may be consulted"). *See also In re Zuma Array Ltd.*, No. 79288888, 2022 TTAB LEXIS 281, at *15 n.18.

Given the in-part legally identical services, and that the trade channels are the same for these legally identical services, the second and third *DuPont* factors strongly favor a likelihood of confusion.

Despite the above findings and conclusions regarding the second and third *DuPont* factors, we address Applicant's arguments that its services are significantly different from those offered by the Registrant. Specifically, Applicant contends that it and Registrant "offer their services in different sectors of the healthcare industry [and] also offer their services to different consumers in the industry."[17] Applicant asserts that based upon "a careful reading of the identifications of services in the Cited Registrations, it can be readily understood that the registrant offers its services for medical testing and diagnostics to healthcare providers, such as doctors and their practices, hospitals, scientists, and the like, as only trained medical professionals and scientists would order and perform medical diagnostics and treatment."[18] Applicant further asserts that "[c]onversely, Applicant's palliative care, hospice, and home health care services are targeted to end-consumers, such as elderly citizens and/or family members making healthcare choices for their elderly loved ones."[19] Applicant also submitted printouts from Registrant's website to support its contention that "Registrant's target consumers, healthcare providers and scientists, are highly

[17] 6 TTABVUE 21.

[18] 6 TTABVUE 21.

[19] 6 TTABVUE 21.

trained and sophisticated medical professionals and providers that are subject to strict government regulation and standards of care."[20]

Applicant's argument, however, is unavailing because it ignores the fact that Registrant's "medical services" are separated by a semicolon from the other services listed in the registration and, as such, constitutes a distinct service that is not construed or limited based on the remaining services listed in the registration's recitation of services. *See, e.g., In re Midwest Gaming & Entm't LLC*, No. 85111552, 2013 TTAB LEXIS 55, at *9 & n.4 (semicolons in identification separate services into discrete categories). In addition, to the extent that Applicant is relying on the Registrant's website to confine or narrow the scope of Registrant's services, as they are described in the registration, this is improper because we cannot rely on extrinsic evidence of actual use to limit the cited registration's recitation of services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, at 1323-1325 (Fed. Cir. 2017); *Octocom Sys.*, 918 F.2d at 943.

Although not necessary for our decision, the record also includes the Examining Attorney's submission of Internet evidence showing a relationship between Registrant's medical testing and diagnostic services[21] and Applicant's palliative, hospice and home health care services.[22] In all, the Examining Attorney submitted

[20] Applicant's response filed November 30, 2024, with website printouts attached as Exs. A-1 and A-2.

[21] Specifically, Reg. '132 lists "medical testing and analysis for diagnostic or treatment purposes," as well as more specific testing and diagnostic services in the fields such DNA and genome sequencing.

[22] Internet evidence attached to Office Actions issued on January 13, 2025 and April 8, 2025.

printouts from thirteen different websites for entities that provide these services – e.g., the Johns Hopkins advertises "palliative care, hospice care" and "Johns Hopkins Care at Home brings health care services to you," while also touting its "Testing Services … Genetic Resources Core Facility … DNA Diagnostic Laboratory."[23] This evidence is probative because it shows that these are the types of services that may emanate from a common source under a single mark. *See Detroit Athletic*, 903 F.3d at 1306 (evidence that third parties use the same mark for the involved goods and services "suggests that consumers are accustomed to seeing a single mark associated with a source that sells both"); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (stating that evidence that "a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis"); *In re Davey Prods. Pty Ltd.*, 2009 TTAB LEXIS 524, at *14-15 (third-party website evidence shows that the applicant's and registrant's products "can be manufactured and sold by a single source").

Accordingly, in addition to our finding that Applicant's palliative, hospice and home health care services are legally identical to Registrant's "medical services," we find Applicant's services are closely related to Registrant's medical testing and diagnostic services.

D. Consumer Sophistication

Under the fourth *DuPont* factor, we consider "[t]he conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing."

[23] January 13, 2025 Office Action, TSDR pp. 32-44.

DuPont, 476 F.2d at 1361. As a general matter, "we must make our determination based on the least sophisticated consumer." *In re Guild Mortg. Co.*, No. 86709944, 2020 TTAB LEXIS 17, at *17 (citing *Stone Lion*, 746 F.3d at 1325); *In re FCA US LLC*, No. 85650654, 2018 TTAB LEXIS 116, at *29.

In this regard, Applicant argues that "although Applicant's services are offered to the general public, such consumers are still more prudent than the average purchaser because they exercise great care in selecting palliative care, hospice, and home health care services."[24] Applicant also argues that "Registrant's consumers must carefully select providers of services for medical diagnostics and treatment, as making correct and accurate diagnoses is crucial to providing effective and safe medical care" and that they are "thus necessarily sophisticated and make prudent purchasing decisions such that they are not likely to be confused."[25]

The Examining Attorney responds by stating that, "[a]ssuming arguendo that the consumers are sophisticated, it is settled that 'even sophisticated purchasers are not immune from source confusion,'" citing and quoting the Board's decision in *In re i.am.symbolic*, 2015 TTAB LEXIS 369, at *21.[26] The Examining Attorney further argues that any presumed sophisticated purchasing decision is outweighed by the "identity of the marks and the relatedness of the … services."[27] We agree.

[24] 6 TTABVUE 23.

[25] 6 TTABVUE 22.

[26] 8 TTABVUE 20.

[27] 8 TTABVUE 20. As Applicant aptly points out, the marks in this appeal are not identical.

In certain cases, the Board has found that the fourth *DuPont* factor supports a finding that confusion is not likely due to the importance of, and other circumstances surrounding, decisions to purchase services regarding living conditions, health care and medical services. *See, e.g., Primrose Retirement Cmtys., LLC v. Edward Rose Senior Living, LLC*, No. 91217095, 2016 TTAB LEXIS 604, at *28 (higher level of care in "decision regarding a senior living community is a serious one, often a once-in-a-lifetime choice, and one that is relatively expensive"). Consumers of Applicant's palliative, hospice and home health care services, and those interested in Registrant's "medical services" are from the general public and they likely would not be uniformly sophisticated. Nevertheless, as explained in *Primrose*, because all of these services involve decisions concerning personal health and well-being, and may involve considerable expense, even the least sophisticated potential purchaser is likely to exercise more than ordinary care in selecting and obtaining the services. In other words, these are inherently the types of services where consumers generally will take more time in selecting the source or provider of the services.

We find that the fourth *DuPont* factor slightly supports a finding that confusion is not likely.

II. Conclusion

The first *DuPont* factor favors a finding of a likelihood of confusion because Applicant's mark ILLUMIA HEALTH and the cited mark ILLUMINA are very similar. The second and third *DuPont* factors strongly support such a finding because the involved services and channels of trade are legally identical in part.

On the other hand, both the fourth and sixth *DuPont* factors slightly support a finding that confusion is not likely given the inherent personal importance of the services to consumers, and there being some weakness in ILLUM- formative marks for medical-related services.

In weighing the relative importance of these factors, we conclude that "the legal identity in part and similarity of the services and the similarity between the marks outweigh any sophisticated purchasing decision." *Integrated Embedded*, 2016 TTAB LEXIS 470, at *41. "In view thereof, we find that Applicant's mark, as used in association with the services identified in the application, is likely to cause confusion with the registered mark used in connection with the services recited in the registration." *Id.* at 41.

Decision: The refusal under Trademark Act Section 2(d) to register ILLUMIA HEALTH is affirmed.