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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Ghost Agency, Inc.

Serial No. 98709623

Michael Zarrabian of Command IP LLP,
for The Ghost Agency, Inc.

Amber Barreda, Trademark Examining Attorney, Law Office 103,
Stacy Wahlberg, Managing Attorney.

Before Pologeorgis, Allard, and Bradley,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

The Ghost Agency, Inc. ("Applicant") seeks registration on the Principal Register of the mark

("AGENCY" disclaimed) for the following services:

> Advertising services to create brand identity for others; Post-production editing services for video and audio commercials; Advertising agency services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium; Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine

> marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels; Digital marketing services; On-line customer-based social media brand marketing services; Social media strategy and marketing consultancy focusing on helping clients create and extend their product and brand strategies by building virally engaging marketing solutions; Providing advertising services using 3D and animation designs

in International Class 35.[1]

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used on the services identified above, so resembles the mark registered on the Principal Register for, among other things, "Advertising and marketing services" in International Class 35,[2] that it is likely to cause confusion, to cause mistake, or to deceive.

After the refusal was made final, Applicant requested reconsideration and concurrently filed a notice of appeal.[3] The Board suspended the appeal and remanded

[1] Application Serial No. 98709623 was filed on August 21, 2024, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere since August 1, 2006 and first use in commerce since August 6, 2006.

The mark is described as "consist[ing] of the stylized text 'GHOST' in grey with the letter 'G' formed by a capital letter 'C' with a red horizontal line representing the counterpart of the letter. Below, is the stylized text 'AGENCY' in grey with a grey horizontal line extending to the left of the word 'AGENCY'." The colors grey and red are claimed as a feature of the mark.

[2] Registration No. 6211578 was issued on December 1, 2020. The mark is described as "consist[ing] of the word 'GHOST' in a stylized form." Color is not claimed as a feature of the mark.

[3] August 21, 2025 Request for Reconsideration after Final; 1 TTABVUE.

the application to the Examining Attorney to consider the request for reconsideration.[4] After the Examining Attorney denied the request, the appeal was resumed.[5] The appeal is fully briefed.[6] We reverse the refusal.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits the registration of a mark that "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office … as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive …." 15 U.S.C. § 1052(d). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion factors. *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild*

References to the briefs on appeal refer to TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry.

[4] 2 TTABVUE.

[5] 4, 5 TTABVUE.

[6] Applicant's brief appears at 6 TTABVUE, the Examining Attorney's brief appears at 8 TTABVUE, and Applicant's reply brief appears at 9 TTABVUE.

Applicant's brief contains numerous hyperlinks. *See, e.g.*, 6 TTABVUE 9, 16-18, 20. To the extent that Applicant seeks to introduce new evidence with its brief, such submission is untimely and will be given no consideration. *See In re James S. Fallon*, No. 86882668, 2020 TTAB LEXIS 464, at *7-8 (TTAB 2020). Moreover, it is well-settled that hyperlinks in a brief do not properly make the evidence available at the link of record. *See In re Olin Corp.*, No. 86651083, 2017 TTAB LEXIS 337, at *15 n.15 (TTAB 2017) ("Because the information displayed at a link's Internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record."). We consider the evidence specified in Applicant's brief only to the extent that it was properly made of record during examination.

Mortg. Co., 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weights 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.").

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the relatedness of the goods or services. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002). These two factors, together with others, specifically the third factor (channels of trade and classes of consumers) and the sixth factor (number and nature of similar marks (i.e., strength of the cited mark)), are addressed in this decision.

A. The Strength or Weakness of the Cited Mark

We turn first to the strength of the cited mark and consider Applicant's argument that the cited mark is "relatively weak because it is highly suggestive of a characteristic of the underlying services[,]" and because it coexists with sixty-three registered GHOST-formative marks.[7]

When evaluating the strength or weakness of a mark, we look at the mark's conceptual strength based on the nature of the term itself and, if evidence is present, its commercial strength. *See Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) ("There are two prongs of analysis for a mark's strength under the sixth factor: conceptual strength and commercial strength."); *In re Chippendales USA, Inc.*, 622

[7] 6 TTABVUE 5-8.

F.3d 1346, 1353-54 (Fed. Cir. 2010) (measuring both conceptual and marketplace strength).

Conceptual strength is a measure of a mark's distinctiveness and may be placed "in categories of generally increasing distinctiveness: . . . (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful." *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992). "Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, *i.e.*, are less likely to generate confusion over source identification, than their more fanciful counterparts." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015).

Because the cited mark is registered on the Principal Register without a claim of acquired distinctiveness, we must presume that it is inherently distinctive, i.e. that it is at least as distinctive as a suggestive term for its identified services. Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b). *See also Tea Bd. of India v. Republic of Tea, Inc.*, No. 91118587, 2006 TTAB LEXIS 330, at *62 (TTAB 2006) ("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.").

Nonetheless, presumptively distinctive marks can, under some circumstances, be weak as an indicator of source. *In re Fat Boys Water Sports LLC*, No. 86490930, 2016 TTAB LEXIS 150, at *23 (TTAB 2016). Indeed, the Federal Circuit has held that if there is evidence that a mark, or an element of a mark, is commonly adopted by many

different registrants, that may indicate that the mark or common element has some conceptual weakness as an indicator of a single source. *See Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) ("[E]vidence of third-party registrations is relevant to 'show the sense in which a mark is used in ordinary parlance,' . . . that is, some segment that is common to both parties' marks may have 'a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that segment is relatively weak[.]'") (quoting *Juice Generation*, 794 F.3d at 1339).

Applicant argues that the cited mark is "relatively weak because it is highly suggestive of a characteristic of the underlying services[,]"[8] explaining that:

> It is very common for companies that provide white label services for others to use the word "ghost" to refer to the anonymous nature of their services. Clients hire "ghost" agencies like Applicant to work behind the scenes to build and promote their brands. These agencies work anonymously, creating content in the voice of their clients, such that end consumers do not know about their involvement in a company's content creation efforts. Examples of such use include "ghostwriting," "ghost editing," "ghost singing," and "ghost kitchen." When viewed in connection with the marketing, advertising, and entertainment services being offered under the cited marks, then, the registered marks inform consumers that the services offered are meant to be white label services for others. The word "GHOST" is therefore highly suggestive of a characteristic of the services offered under the Cited Mark, and therefore the registration[is] entitled to a narrower scope of protection, such that Applicant's mark can coexist on the trademark register.[9]

[8] 6 TTABVUE 5.

[9] 6 TTABVUE 5-6.

The record shows that in the context of digital marketing, "white label branding" means:

> A marketing agency is hired to provide marketing solutions to its client(s),
>
> Then the agency outsources those services to a white label external team,
>
> The agency then rebrands the end product to make it appear as if they created those solutions,
>
> Then the agency resells those solutions to their client(s).[10]

Thus, according to one third-party website, white-label solutions allow entities to provide products or services under their brand, which are developed and delivered by a third-party provider.[11] "For example, a digital marketing agency might use a white-label digital marketing agency to run website campaigns for their clients, but the clients think the agency did all the work."[12]

To further support its argument that the cited mark is conceptually weak, Applicant made of record sixty-three third-party registrations for marks that

[10] August 21, 2025 Request for Reconsideration at 226, 233.

Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer.

[11] August 21, 2025 Request for Reconsideration at 245.

[12] August 21, 2025 Request for Reconsideration at 234.

While this type of third-party website evidence might be considered hearsay in an inter partes proceeding, in an ex parte appeal, the Board takes a more permissive approach, so we consider it. *In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *6 n.19 (TTAB 2021) ("[W]e are more permissive regarding the use of hearsay in ex parte appeals ...."). *See also* TRADEMARK TRIAL AND APPEAL BOARD (TBMP) § 1208 (2025) and cases cited therein.

incorporate the term GHOST.[13] While we agree with the Examining Attorney that the third-party registrations are not evidence that the registered marks are in use or that the public is familiar with them,[14] nonetheless they may bear on conceptual weakness if a term is commonly registered for similar goods or services. *See Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 (CCPA 1976) (Third-party registrations "may be given some weight to show the meaning of a mark in the same way that dictionaries are used.").

Applicant contends that these 63 registered marks, together with the cited mark, demonstrate that "consumers encounter many different 'GHOST' marks and can distinguish them based on their additional wording, design, and the particular services identified."[15] Contrary to Applicant's argument, the sixth *DuPont* factor considers third-party marks and, in this context, the cited mark itself is not considered a third-party mark. *In re Max Cap. Grp. Ltd.*, No. 77186166, 2010 TTAB LEXIS 1, at *8-9 (2010 TTAB) ("Although characterized as third-party use, applicant has also included uses by itself and the [cited] registrant…. Such evidence does not address the *du Pont* factor of third-party use."). Therefore, we do not consider it in this context.

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[13] 6 TTABVUE 6-7; August 21, 2025 Request for Reconsideration at 69-183, 279-341 (Exhibits A-BK)).

Although Applicant indicates in its brief that each registration has been assigned a corresponding exhibit designation, the printouts attached to the Request for Reconsideration do not include any such designation. Nonetheless, we repeat the exhibit designations herein so as to coordinate the registration to the text of Applicant's argument in its brief and in its Request.

[14] 8 TTABVUE 6.

[15] 6 TTABVUE 6-7.

We also immediately disregard five third-party registrations because they are not based on use in commerce but rather issued under Sections 44(e) or 66(a) of the Trademark Act, 15 U.S.C. §§ 1126(e), 1141f(a), and have been registered for less than five years. *Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 251, at *30-31 (TTAB 2022). As such, the following registered marks have no probative value: Reg. Nos. 5859476;[16] 7699677;[17] 7117201;[18] 7246040;[19] and 7562692.[20]

We can also disregard two registrations that have since been cancelled: Reg. Nos. 5709069;[21] and 5782910.[22] TBMP § 1208.02 ("The Board may choose not to consider expired or cancelled third-party registrations.") and cases cited therein.

To the extent that Applicant argues that the third-party registrations are relevant solely because they identify services in International Class 35, this argument is unavailing. Classification is merely an administrative act that has no bearing on the determination of likelihood of confusion. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018). Rather, we must consider the goods or services as identified in the third-party registrations.

[16] August 21, 2025 Request for Reconsideration at 40, 113-15 (Exhibit AO).

[17] August 21, 2025 Request for Reconsideration at 25, 295-97 (Exhibit I).

[18] August 21, 2025 Request for Reconsideration at 29, 314-16 (Exhibit P).

[19] August 21, 2025 Request for Reconsideration at 41-42, 122-24 (Exhibit AR).

[20] August 21, 2025 Request for Reconsideration at 49, 176-78 (Exhibit BI).

[21] August 21, 2025 Request for Reconsideration at 33-34, 340-41 (Exhibit Z).

[22] August 21, 2025 Request for Reconsideration at 24-25, 292-94 (Exhibit H).

Inasmuch as Applicant's services are legally identical to the services of the cited registration and Applicant did not make of record any evidence that the non-identical goods or services of the third-party registrations are related or similar to those identified in the cited registration,[23] we focus our analysis to those services that are identical to or encompassed by the services identified in the cited registration or encompassed by them. With this in mind, we disregard many of the third-party registrations, including the following exemplary registrations: Reg. Nos. 6057086 ("Online retail store services featuring dietary and nutritional supplements, sports drinks, energy drinks, and drinking accessories");[24] 7062944 (for, among other things, "business management services");[25] 6183787 ("Online retail store services featuring apparel, artwork prints, photographs, paintings, skate decks, and stickers");[26] and 6927943 (for various services, including, "Business management and operation assistance to yacht owners and operators").[27]

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[23] We also note that none of the identifications listed in the third-party registrations demonstrate, on their face, that the services are related.

[24] August 21, 2025 Request for Reconsideration at 21, 69-72 (Exhibit A).

[25] August 21, 2025 Request for Reconsideration at 22, 279-81 (Exhibit C).

[26] August 21, 2025 Request for Reconsideration at 23, 282-83 (Exhibit D).

[27] August 21, 2025 Request for Reconsideration at 23, 284-86 (Exhibit E).

For the same reason, i.e., that the identified goods/services have not been shown to be related or similar, we disregard the following registrations: August 21, 2025 Request for Reconsideration at 34, 73-75 (Exhibit AA, RN 7478568); 34-35, 76-77 (Exhibit AB, RN 6480505); 35, 78-80 (Exhibit AC, RN 6042849); 36, 85-86 (Exhibit AE, RN 3207520); 36-37, 87-88 (Exhibit AF, RN 7480262); 36, 89-91 (Exhibit AG, RN 6210274); 37, 94-95 (Exhibit AI, RN 4616833); 38, 100-04 (Exhibit AK, RN 5887958); 39, 108-110 (Exhibit AM, RN 7130612); 39-40, 111-12 (Exhibit AN, RN 6497708); 44, 135-38 (Exhibit AV, RN 3815835); 45, 142-44 (Exhibit AX, RN 4026596); 45-46, 148-49 (Exhibit AZ, RN 5549674); 22, 150-52 (Exhibit B, RN 7071342); 46, 153-55 (Exhibit BA, RN 4504739); 47, 159-61 (Exhibit BC, RN 7593293); 47, 162-64 (Exhibit BD, RN 5311900); 48, 168-70 (Exhibit BF, RN 5087082); 48, 171-72 (Exhibit BG, RN 5549673); 49, 173-75 (Exhibit BH, RN 3853133); 50, 181-83 (Exhibit BK,

Other third-party registrations we disregard are those for the mark GEIST, both with and without a design (Reg. Nos. 6918651 and 6931401).[28] It is true that each registration includes a statement that the English translation of GEIST is GHOST.[29] However, because Applicant does not argue or explain why the doctrine of foreign equivalents should be applied here, we decline to consider these registrations. In any event, even if the doctrine were applied, these registrations would be irrelevant because they each identify unrelated services, i.e., retail store services in the field of hunting.

Similarly, we disregard the following registered marks because they engender different overall commercial impressions, rendering them less similar to the cited mark than Applicant's mark: (Reg. No. 7606127);[30] RGB OF THE OZARKS (Reg. No. 7114758);[31] (Reg. No. 5656663);[32] (Reg. No.

RN 6464011); 23-24, 287-88 (Exhibit F, RN 7022768); 26, 301-02 (Exhibit K, RN 6941452); 27-28, 306-08 (Exhibit M, RN 6178559); 28, 309-11 (Exhibit N, RN 7530773); 28, 312-13 (Exhibit O, RN 6338851); 29-30, 317-18 (Exhibit Q, RN 6242708); 30-31, 321-22 (Exhibit S, RN 7022767); 31, 324-26 (Exhibit T, RN 7139704); 31, 327-29 (Exhibit U, RN 7231365); 32, 330-31 (Exhibit V, RN 5057626); 32, 332-33 (Exhibit W, RN 7235577); and 32-33, 334-36 (Exhibit X, RN 6927944).

[28] August 21, 2025 Request for Reconsideration at 41, 42, 119-21, 125-27 (Exhibits AQ, AS).

[29] August 21, 2025 Request for Reconsideration at 119-21, 125-27.

[30] August 21, 2025 Request for Reconsideration at 47-48, 165-67 (Exhibit BE).

[31] August 21, 2025 Request for Reconsideration at 49-50, 179-80 (Exhibit BJ).

[32] August 21, 2025 Request for Reconsideration at 43, 131-34 (Exhibit AU).

5549676);[33] and (Reg. No. 3898321).[34] *See e.g., Made in Nature*, 2022 TTAB LEXIS 251, at *29-30; *In re I-Coat Co., LLC*, No. 86802467, 2018 TTAB LEXIS 171, at *16-17 (TTAB 2018) ("none of the[se] marks are as similar to the mark in the cited registration as is Applicant's mark.").

That leaves us with the following twelve third-party registered marks in the name of eleven different entities that identify services that are identical to or encompassed by the services identified in the cited mark:

1) GHOST SHERPA for, among other things, "marketing analysis services" and "market research" (Reg. No. 7517788);[35]

2) GHOST CUBE (CUBE disclaimed) for, among other things, "Advertising and publicity services" (Reg. No. 7076755);[36]

3) and GHOST ROCK both for, among other things, "advertising and marketing" (Reg. Nos. 6975141 and 6734360);[37]

4) GHOST GIRL for, inter alia, "Advertising, promotion and marketing services in the nature of e-mail blast campaigns for others" (Reg. No. 6270118);[38]

[33] August 21, 2025 Request for Reconsideration at 44, 139-41 (Exhibit AW).

[34] August 21, 2025 Request for Reconsideration at 42-43, 128-30 (Exhibit AT).

[35] August 21, 2025 Request for Reconsideration at 24, 289-91 (Exhibit G).

[36] August 21, 2025 Request for Reconsideration at 26, 298-300 (Exhibit J).

[37] August 21, 2025 Request for Reconsideration at 27, 33, 303-05, 337-39 (Exhibits L, Y).

[38] August 21, 2025 Request for Reconsideration at 30, 319-20 (Exhibit R).

5) GHOST GAMING (GAMING disclaimed) for, among other things, "advertising and marketing services" (Reg. No. 6211376);[39]

6) THE TAX GHOST for, among other things, "Marketing services in the nature of lead generation" (Reg. No. 7405053);[40]

7)

(MULTIROTOR QUADCOPTER disclaimed) for, inter alia, "advertising; marketing and promotional services" (Reg. No. 5286646);[41]

8) THE WRITING GHOST (WRITING disclaimed) for, among other things, "marketing services" (Reg. No. 5384821);[42]

9)

("GHOST" and "MARKETING AGENCY" disclaimed) for, among other things, "Marketing services" (Reg. No. 7384213);[43]

10) GHOSTLIGHT for, inter alia, "Advertising for motion picture films" (Reg. No. 6743149);[44] and

11) GHOSTWATER for, among other things, "providing motion picture advertising for others" (Reg. No. 2466034).[45]

While 12 third-party registrations is substantially less than the 63 registrations proffered, nonetheless, considering all of the above-discussed evidence, we find that the record shows that the term GHOST is highly suggestive because it brings to mind a feature or purpose of the services for which the marks are registered–to render

[39] August 21, 2025 Request for Reconsideration at 35-36, 81-84 (Exhibit AD).

[40] August 21, 2025 Request for Reconsideration at 37, 92-93 (Exhibit AH).

[41] August 21, 2025 Request for Reconsideration at 37-38, 96-99 (Exhibit AJ).

[42] August 21, 2025 Request for Reconsideration at 38-39, 105-07 (Exhibit AL).

[43] August 21, 2025 Request for Reconsideration at 40-41, 116-18 (Exhibit AP).

[44] August 21, 2025 Request for Reconsideration at 45, 145-47 (Exhibit AY).

[45] August 21, 2025 Request for Reconsideration at 46-47, 156-58 (Exhibit BB).

advertising and marketing services for and in the name of another. As a result, the term GHOST is conceptually weak when used with advertising and marketing services and entitled only to a narrow scope of protection. *See Juice Generation,* 794 F.3d at 1339 ("Marks that are . . . highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts."); *Made in Nature*, 2022 TTAB LEXIS 251, at *42 ("Opposer's MADE IN NATURE marks are highly suggestive, because they bring to mind a quality of the goods for which the marks are registered—all natural without added man-made ingredients.").[46] Thus, the sixth *DuPont* factor does not favor a finding of likelihood of confusion.

B. Similarity or Dissimilarity and Nature of the Services, and Similarity or Dissimilarity of Established and Likely-to-Continue Channels of Trade and Classes of Purchasers

We turn next to the second *DuPont* factor, which involves a comparison of the services as they are identified in the involved application and the cited registration. *See In re Detroit Athletic*, 903 F.3d at 1306; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002).

[46] Both the Examining Attorney and Applicant focus on conceptual strength and neither discuss commercial strength. 6 TTABVUE 5-8, 23; 8 TTABVUE 6-8. Evidence of third-party registrations unaccompanied by evidence of use of the mark is not probative of the commercial weakness of the cited mark. Here, because Applicant did not submit any evidence of third-party use, and because third-party registrations do not equate to proof of third-party use, we do not find the cited mark commercially weak. *Tao Licensing, LLC v. Bender Consulting Ltd.*, No. 92057132, 2017 TTAB LEXIS 437, at *47 (TTAB 2017) ("Use evidence may reflect commercial weakness, while third-party registration evidence that does not equate to proof of third-party use may bear on conceptual weakness if a term is commonly registered for similar goods or services.").

Recall that the cited registration identifies "advertising and marketing services," which encompasses all services of the type described, including Applicant's more narrowly identified services, which include:

- Advertising services to create brand identity for others;
- Advertising agency services;
- Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line medium;
- Advertising and marketing services provided by means of indirect methods of marketing communications, namely, social media, search engine marketing, inquiry marketing, internet marketing, mobile marketing, blogging and other forms of passive, sharable or viral communications channels; and
- Digital marketing services.

Accordingly, Applicant's and Registrant's services are legally identical in-part.[47] *See New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 TTAB LEXIS 199, at *39-40 (TTAB 2020) (finding "caps" as identified in the application broad enough to

[47] The Examining Attorney also provided third-party website evidence showing that "it is common for consumers to encounter the applicant's services and cited services together and offered by the same source in the marketplace." 8 TTABVUE 17. This evidence indicates that the identified services are of a type that may commonly emanate from a single source and thus may be perceived as related and that they also travel through the same channels of trade. While we appreciate the Examining Attorney's thoroughness in providing this evidence, we need not further consider it, given our finding that, based on the respective identifications of services alone, Applicant's services and Registrant's services are legally identical in-part and are presumed to travel through the same channels of trade to the same classes of consumers. *In re Viterra Inc.,* 671 F.3d 1358, 1362 (Fed. Cir. 2012).

The Examining Attorney also made arguments ostensibly under the fourth *DuPont* factor, but concludes that "[f]or the foregoing reasons, … applicant's services and the cited services are considered related for likelihood of confusion purposes." 8 TTABVUE 8. Because these arguments are addressed in our discussion of the second factor, we have not separately addressed the fourth *DuPont* factor. Applicant, for its part, does not address the fourth factor.

encompass all types of caps, including "athletic caps" identified in the opposer's registration, rendering the parties' goods in-part legally identical); *In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 TTAB LEXIS 65, at *10 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'").

This brings us to the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. Because the services are legally identical in-part and because the identifications of the involved application and cited registration are unrestricted as to trade channels, we must presume that the legally identical in-part services travel in the same channels of trade to the same class of purchasers. *See In re Viterra,* 671 F.3d at 1362 (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").

The legally identical nature of the services and the presumed identity in trade channels and classes of purchasers cause the second and third *DuPont* factors to weigh heavily in favor of finding a likelihood of confusion.

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, considering their appearance, sound, meaning and commercial impression. *DuPont*, 476 F.2d at 1361. *See also In re Detroit Athletic*, 903 F.3d at 1303. In comparing the marks, "[t]he proper test is not a

side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression' such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, No. 91160856, 2007 TTAB LEXIS 35, at *14 (TTAB 2007)). The proper focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014). Finally, where, as here, the marks are used with legally identical services, "a lesser degree of similarity between the marks may be sufficient to give rise to a likelihood of confusion." *Coach Servs.*, 668 F.3d at 1368.

While marks must be compared in their entireties and the analysis cannot be predicated on dissecting the marks into their various components, different features may be analyzed to determine whether the marks are similar. *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *New Era Cap*, 2020 TTAB LEXIS 199, at *41-42. 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 a consideration of the marks in their entireties. *Nat'l Data*, 753 F.2d at 1058.

Recall that Applicant seeks to register GHOST AGENCY and the mark of the cited registration is ghost.

Applicant argues that its highly stylized letter G, is formed by a grey capital C shape and a red horizontal line, and constitutes "a design evocative of a 'power on' button symbol."[48] Applicant maintains that this design element not only differentiates the appearance of Applicant's mark from the word GHOST "but also imbues it with a **modern, tech-savvy impression** distinct from the cited registrant's mark (which lacks such imagery)."[49] To support its argument, Applicant made of record evidence that the symbol is known as the power symbol.[50]

The Examining Attorney counters that the literal element GHOST is the dominant element in Applicant's mark and it is identical to the only literal element in the cited mark.[51] Because the term AGENCY has been disclaimed, the Examining Attorney continues, this term does not have any trademark significance so it cannot meaningfully differentiate the marks.[52] As for Applicant's design element, i.e., the power button, the Examining Attorney contends that it does not create a distinct commercial impression apart from the literal element and, as a result, it is insufficient to differentiate the marks.[53]

[48] 6 TTABVUE 8.

[49] 6 TTABVUE 9-10 (emphasis in original).

[50] August 21, 2025 Request for Reconsideration after Final at 197-98 (Wikipedia.org), 219 (dribble.com).

[51] 8 TTABVUE 7-8.

[52] 8 TTABVUE 9.

[53] 8 TTABVUE 11.

As an initial matter, we disagree that the cited mark makes the commercial impression of the word GHOST with a line through it. While we acknowledge that this understanding is consistent with the description of the mark, the description of the mark is not binding upon our determination since "[a] mark's meaning is based on the impression actually created by the mark in the minds of consumers, not on the impression that the applicant states the mark is intended to convey." TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 808.02 (May 2026) (giving the examining attorney the discretion to decide when to defer to the applicant's phrasing of a description of the mark). The cited mark consists of letters all in lower case; the initial letter appears to us as a lowercase "q", not a lowercase "g". Thus, the mark makes the commercial impression of "Q HOST," which suggests some sort of hosting, possibly web hosting, for example, that is commonly associated with websites, which are a common form of digital advertising and marketing.[54]

We are also not persuaded by Applicant's arguments that its symbol is a power button, nonetheless we do agree that this stylized G, with its clean, crisp lines and contrasting colors, causes Applicant's mark to make a different commercial impression than that of the cited mark. This is true despite the shared component "host", which causes the marks to sound similar. Apart from this similarity in sound of the end portion (HOST), the distinctive stylizations of the marks cause them to look very different, particularly when the entirety of Applicant's mark is considered,

[54] *See, e.g.*, August 21, 2025 Request for Reconsideration at 225-28.

which includes the term AGENCY. The differences in the connotations of the marks (Q HOST versus GHOST (with a stylized G) AGENCY) are very different and, when considering the marks in their entireties, the marks engender very different commercial impressions.

Even were we to find that the cited mark engenders the commercial impression of GHOST with a line through it, rather than Q HOST, we would still find confusion is unlikely. This is because the record demonstrates that the term GHOST is conceptually weak and this conceptual weakness, when combined with the dissimilarity of the stylizations of the marks discussed above, would also be sufficient to find that confusion is not likely.

The first *DuPont* factor weighs against likelihood of confusion.

D. Balancing the *DuPont* Factors

Having carefully considered all of the evidence made of record, as well as all of the arguments related thereto, we now turn to the task of weighing the *DuPont* factors for which there has been evidence and argument. *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023).

The term GHOST has been shown to be conceptually weak under the sixth *DuPont* factor which therefore disfavors a finding of likelihood of confusion. Regarding the second and third factors, these each weigh heavily in favor of a likelihood of confusion because the identified services are legally identical in-part and are presumed to travel through the same channels of trade to the same classes of consumers. Under the first factor, we consider the marks to be dissimilar. Dissimilarity of the marks alone is a

sufficient basis to conclude that no confusion is likely. *See, e.g.*, *Odom's Tenn. Pride Sausage, Inc. v. FF Acquisition*, LLC, 600 F.3d 1343, 1347 (Fed. Cir. 2010) (holding the first *DuPont* factor alone may be dispositive in a likelihood of confusion analysis); *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998) (same); *Kellogg Co. v. Pack 'Em Enters., Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive" and holding that "substantial and undisputed differences" between two competing marks justified a conclusion of no likelihood of confusion on summary judgment).

Decision

The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is reversed.