THIS OPINION IS NOT A
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Mailed: August 12, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Serena Williams

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Serial No. 90321926

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Emily M. Borich of Foster Garvey PC,
for Serena Williams.

Faith Beaudry-Torres, Trademark Examining Attorney, Law Office 126,
Jeffrey Look, Managing Attorney.

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Before Pologeorgis, Elgin, and Brock, Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:

Applicant Serena Williams seeks registration on the Principal Register of the mark SERENA VENTURES in standard characters (“VENTURES” disclaimed) for

> Investment of funds; Venture capital financing; Venture capital funding services to emerging and start-up companies; Venture capital services, namely, providing financing to emerging and start-up companies; Capital investment; Equity capital investment; Providing venture capital, development capital, private equity and investment funding, in International Class 36.[1]

[1] Serial No. 90321926 was filed on November 16, 2020 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based on Applicant’s claimed first use of the mark as early as August 18, 2017 and first use of the mark in commerce at least as early as December 3, 2018.

The Trademark Examining Attorney refused registration on the ground that Applicant's mark, when used in connection with the identified services, so resembles the registered mark SERENA in standard characters for

> Real estate brokerage; real estate management services; real estate brokerage of condominiums; real estate services, namely, condominium management services; providing information in the field of real estate; providing real estate listings and real estate information via the Internet; financing of loans; financing services; mortgage financing services; real estate financing services; providing information in the field of finance; real estate funds investment services; financial investment brokerage services; real estate investment services; investment advisory services; capital investment services; real estate services, namely, renting, brokerage, and managing property for third parties; real estate services, namely, real estate agent services featuring the researching and comparing of property listings, determining competitive market pricing for properties, interviewing prospective clients for purposes of assisting clients in selecting properties, accompanying clients viewing prospective properties; real estate brokerage services featuring property sales negotiation; providing real estate information, namely, information about sale prices, locations, property descriptions; real estate services, namely, managing rental properties; real estate services, namely, monitoring of real estate market conditions and trends for purposes of real estate investment, in International Class 36[2]

that it is likely to cause confusion, cause mistake, or deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

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[2] Registration No. 7572578 registered on November 19, 2024.

Applicant appealed. Applicant and the Examining Attorney filed briefs.[3] For the reasons set forth below, we **affirm** the refusal to register.

I. Likelihood of Confusion Standard

Section 2(d) of 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, mistake, or deception. 15 U.S.C. § 1052(d); *see also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Our determination under Section 2(d) is based on an analysis of all probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role, and some factors may not be relevant. *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (citing *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). In addition, varying weight may be assigned to each factor depending on the evidence presented, and "any one of the factors may control a particular case." *Id.*; *see also Charger Ventures*, 64 F.4th at 1381.

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[3] Applicant's brief is at 7 TTABVUE. The Examining Attorney's brief is at 9 TTABVUE. The Board granted Applicant's motion to extend its time to file a reply brief by thirty days. *See* 11 TTABVUE. Applicant, however, chose not to file a reply brief.

Citations to the prosecution record refer to the USPTO Trademark Status and Document Retrieval system (TSDR) in the downloadable .pdf format by page number. References to the briefs on appeal refer to the Board's TTABVUE docket system. *In re Integra Biosciences Corp.*, No. 87484450, 2022 TTAB LEXIS 17, at *6.

Although we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the services. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (citing *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). In cases where we find some factor or factors relatively more important, we weigh or balance them more heavily in the final step of assessing the factors to determine whether confusion is likely. *Charger Ventures*, 64 F.4th at 1381.

II. Likelihood of Confusion Analysis

We address each of the factors argued by Applicant and the Examining Attorney, although we start our analysis with the second and third factors based on the facts in this case.[4]

A. The Services

The second *DuPont* factor "considers the similarity or dissimilarity and nature of the [services] as described in the involved application and cited registration … and contemplates whether the consuming public may perceive the respective [services] as

[4] We note that most of the authorities relied on by Applicant are federal district and circuit court cases. *See* 7 TTABVUE 4, 6-10 (citing cases from the U.S. Courts of Appeals for the Second, Fifth, Sixth, and Ninth Circuits, the Southern District of New York, and the Eastern District of California). We are not bound by these authorities. Rather, we apply the law set forth by the U.S. Court of Appeals for the Federal Circuit, its predecessor, the U.S. Court of Customs and Patent Appeals, and precedential decisions of the Board. Applicant is permitted to cite to nonprecedential cases, but they have limited persuasive value, and the practice is not encouraged. *In re Tapio GmbH*, No. 87941532, 2020 TTAB LEXIS 483, at *26 n.30; *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2026). For these reasons, we generally do not discuss such cases in decisions.

related enough to cause confusion about their source or origin." *In re Samsung Display Co.*, No. 90502617, 2024 TTAB LEXIS 258, at *6 (cleaned up; citations omitted).

We "begin with the identifications of … services in the registration and application under consideration." *In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *10 (cleaned up; citation omitted). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of services within a particular class in the application or registration. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

The Examining Attorney argues, and we agree, that the services are identical in part as to namely: "capital investment" services (application) and "capital investment services" (cited registration). In addition, the application contains services that are legally identical based on broadly-described services in one which encompass narrowly described services in the other, such as:

- The broad "capital investment services" (cited registration) encompasses the narrower "equity capital investment" services (application);
- The broad "financing services" (cited registration) encompasses the narrower "venture capital financing," "Venture capital funding services to emerging and start-up companies," and "providing financing to emerging and start-up companies" (application); and

- The broad "investment of funds" (application) encompasses the narrower "real estate funds investment services" (cited registration).[5]

"Where an applicant identifies its services broadly, we must presume that the services encompass all services of the type identified." *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, No. 94002242, 2015 TTAB LEXIS 176, at *60-61 (citation omitted), *aff'd mem.*, 652 F. App'x 971 (Fed. Cir. 2016); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013) (applying principle that "registration encompasses all goods or services of the type described"); *In re AC Webconnecting Holding B.V.*, No. 85635277, 2020 TTAB LEXIS 428, at *32 (services identified in the application without limitation must be presumed to include narrower services). Thus, the above-described services overlap and are legally identical, in part.

Applicant counters that, "[a]lthough both marks operate broadly within the financial and real estate sectors, the nature, focus, and positioning of the services they cover are materially different …. Here, Applicant's services center on investment services aimed at sophisticated investors and businesses across all industries …. By

[5] When an identification such as "real estate fund" is unclear, we may resort to extrinsic evidence to understand it, and we have done so here. *See, e.g., In re Thor Tech, Inc.*, No. 78634024, 2009 TTAB LEXIS 253, at *12 n.10 (although extrinsic evidence may not be used to limit or restrict the identified goods or services, it is nonetheless proper to consider extrinsic evidence in the nature of dictionary entries to define the terminology used to describe them). This includes government publications. *See In re Nieves & Nieves LLC*, No. 85179263, 2015 TTAB LEXIS 12, at *7 (taking judicial notice of U.S. government online publications).

We take judicial notice that a "real estate fund" is defined by the SEC as: "Any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets." Securities and Exchange Commission Form PF (www.sec.gov/comments/S7-2026-13/s7202613-769607-2358794.pdf, accessed August 6, 2026). "A private fund is a pooled investment vehicle …." SEC Glossary (www.sec.gov/resources-small-businesses/glossary#PFund, accessed August 6, 2026).

contrast, the Cited Registration covers services, all specifically limited to real estate."[6] The Examining Attorney argues that not all of the services listed in the registration are limited to the field of real estate.[7]

We agree with the Examining Attorney's argument. Only some of Registrant's services are restricted to the field of real estate; others (including "capital investment services" and "financing services") contain no such restriction. Under standard examination practice, a semicolon is used to separate distinct categories of goods or services. *In re Midwest Gaming & Entm't LLC*, No. 85111552, 2013 TTAB LEXIS 55, at *9 and n.4 (semicolons in identification separate services into discrete categories). We may not read limitations from some parts of Registrant's identification which are separated by semicolons into another. That is, a specific limitation in one part of the services does not limit more broadly described services.

Where the identification of services is broad, the Board "presume[s] that the services encompass all services of the type identified." *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *4 (citing *Sw. Mgmt.*, 2015 TTAB LEXIS 176, at *60-61). Applicant may not restrict the scope of the services covered in the cited registration by argument or by extrinsic evidence.[8] *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) ("It was proper, however, for the Board to focus on the application and registrations rather than on real-world

[6] 7 TTABVUE 6-7; *see also id.* at 6 (discussing "SERENA for real estate services").

[7] 9 TTABVUE 7.

[8] *See* 7 TTABVUE 7 (arguing that Registrant targets general consumers through the "sale of boutique residences and condominiums in Clearwater, Florida"); *see also* February 27, 2025 Response to Office Action at TSDR 7-12 (Exh. A).

conditions, because 'the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application.'") (quoting *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)).

In view of the overlap in services discussed above, we find that the services are both identical and legally identical in part.[9] The second *DuPont* factor strongly favors a finding of likelihood of confusion.

B. The Channels of Trade

The third *DuPont* factor concerns the "similarity or dissimilarity of established, likely-to-continue trade channels." *Samsung*, 2024 TTAB LEXIS 258, at *17 (quoting *DuPont*, 476 F.2d at 1361). To the extent the services of Applicant and Registrant are identical and legally identical in part, we presume that these services travel in the same channels of trade to the same classes of consumers. *See In re Viterra, Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (Board was entitled to rely on presumption that, absent restrictions, legally identical goods travel in the same channels of trade to the same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 754 (CCPA 1968) (where there are legally identical goods, class of purchasers is considered to be the same). Thus, Applicant's argument about the real-world sale of the services to different classes of consumers is not persuasive.[10]

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[9] Thus, there is no need also to discuss the relatedness of the services, as argued by the Examining Attorney. *See* 9 TTABVUE 9.

[10] *See* 7 TTABVUE 7-8.

Applicant also argues that there is some geographic separation between the uses:

> Registrant appears to primarily operate in Clearwater, Florida where its real estate property is located. By contrast, Applicant's mark is used in all geographic regions in the United States. Geographic distance matters, particularly in service industries that are often localized or regional in character. The 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.[11]

This argument is unclear – Applicant appears to contend (although she states that her mark is used in "all geographic regions in the United States") that she does not offer her services in Clearwater, Florida, and that the uses are thus geographically distinct. If proven, this might be relevant in an infringement action or concurrent use proceeding but is not relevant in an ex parte appeal. As the Examining Attorney points out, Registrant owns an unrestricted registration which gives Registrant presumptive exclusive rights to nationwide use of its mark in connection with the identified services under Trademark Act Section 7(b), 15 U.S.C. § 1057(b), regardless of its actual extent of use.[12] It is not relevant to our analysis whether Applicant and Registrant offer their services in different geographic areas. *See Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1568-69 (Fed. Cir. 1983) ("Therefore, the geographical distance between the present locations of the respective businesses of the two parties has little relevance in this case").

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[11] *Id.* at 10. Applicant did not pin this argument to any particular *DuPont* factor; we consider it most relevant to the third factor.

[12] 9 TTABVUE 10-11.

Due to the in-part identity and legal identity of the services, the third *DuPont* factor also heavily favors a finding of likelihood of confusion.

C. The Marks

We next turn to the first *DuPont* factor, 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 TTAB LEXIS 412, at *9 (quoting *DuPont*, 476 F.2d at 1361). In comparing the marks, we are mindful that the identity and legal identity of some of the services and their overlapping channels of trade and classes of consumers reduce the degree of similarity between the marks necessary to find a likelihood of confusion. *Viterra*, 671 F.3d at 1363; *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348 (Fed. Cir. 2010).

Applicant's mark is SERENA VENTURES and the cited mark is SERENA (both in standard characters). The marks are similar in that the applied-for mark incorporates the entirety of the cited mark. Although there is no explicit rule that the marks are automatically similar, "[l]ikelihood of confusion often has been found where the entirety of one mark is incorporated within another." *Double Coin Holdings Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, at *20 (quoting *Hunter Indus., Inc. v. Toro Co.*, No. 91203612, 2014 TTAB LEXIS 105, at *33).

As the first term in the applied-for mark, SERENA is the dominant term, "further establishing its prominence." *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108, 2018 WL 1620989, at *2 (TTAB 2018). The disclaimed term VENTURES in Applicant's mark lacks source identifying significance because it is at least descriptive of Applicant's listed services. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372-73 (Fed. Cir. 2005) ("The presence of this strong distinctive term [VEUVE] as the first word in both parties' marks renders the marks similar, especially in light of the largely laudatory (and hence non-source identifying) significance of the word ROYALE"). Disclaimed descriptive or generic matter is typically less significant or less dominant in relation to other wording in a mark. *See In re Dixie Rests.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (finding DELTA to be the dominant part of the mark THE DELTA CAFE & design because CAFE was generic and disclaimed).

Both marks also are in standard characters and, as such, each mark "may be presented in any font style, size or color, including the same font, size and color," including "one that minimizes the differences or emphasizes the similarities between the marks." *Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 TTAB LEXIS 464, at *43-44 (cleaned up; citations omitted). Thus, SERENA may be presented in much larger font than VENTURES in Applicant's mark, minimizing the differences between the marks.

We are not convinced by Applicant's argument that her mark has a "layered meaning" that "conveys a distinct corporate and institutional identity."[13] Applicant does not explain this argument or cite to any evidence in the record in support of it. To the extent that Applicant intimates under the first *DuPont* factor that consumers

[13] 7 TTABVUE 6.

view SERENA VENTURES as referring to herself as a well-known tennis player,[14] this could have been relevant had it been proven by evidence. Surprisingly, Applicant did not make of record any evidence to support her identity or claim of fame (especially as to her first name without her surname, as appears in the mark), and nevertheless, attorney argument is not evidence. *Gasparilla*, 2025 TTAB LEXIS 412, at *13-14 n.15. Nonetheless, the Examining Attorney acknowledged that "Serena Williams [is] a noted female professional tennis player."[15] We take judicial notice, as a commonly known fact not subject to dispute, that Applicant is a well-known tennis player. *See* TBMP § 1208.04 and authorities cited therein. We do so solely for the limited purpose of evaluating whether the term SERENA carries a particular connotation relevant to the first *DuPont* factor.[16]

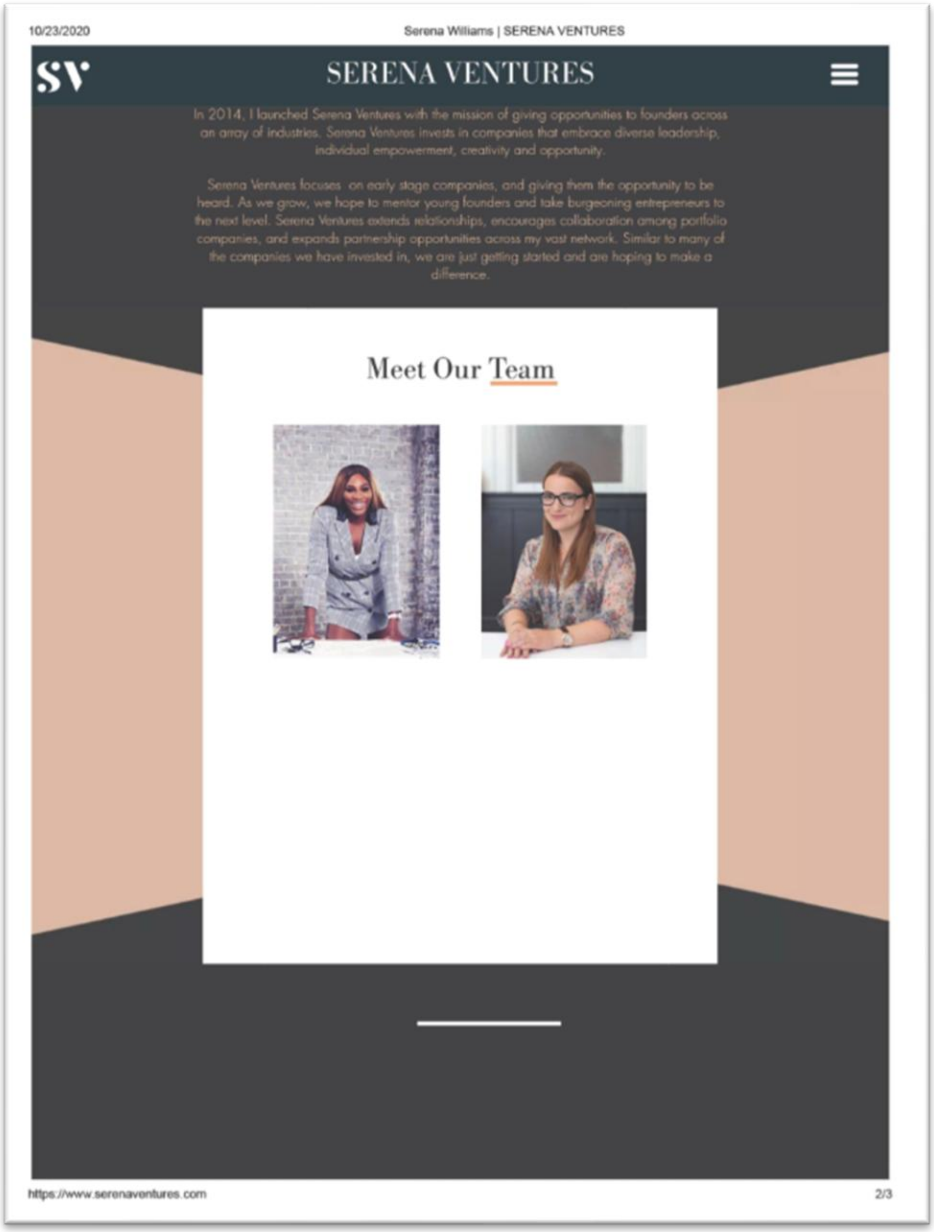
However, even accepting this connotation, Applicant failed to provide evidence that consumers of financial and investment services would make this association — i.e., Applicant's renown in tennis, or even sports more generally, does not automatically transfer to a different commercial field. Indeed, the only evidence of

[14] *See id.* at 9 ("[C]onsumers associate SERENA VENTURES with the famous public figure, Serena Williams."). As we discuss below, this argument was made erroneously under the fifth *DuPont* factor, fame of the mark. But we address it here as well.

[15] 9 TTABVUE 5.

[16] We emphasize that this limited judicial notice of public recognition does not equate to a finding of fame of the mark for purposes of the fifth or any other *DuPont* factor in our analysis; this is discussed further below.

record that shows Applicant's association with the services is on the application specimen of use, where a picture of Applicant – but not her name– appears:[17]



[17] November 16, 2020 Specimen of Use at TSDR 2. Applicant's name appears in the webpage HTML header along with the date printed, *id.* at TSDR 1-3, but this is visible only when the website is printed and would rarely be seen by the consumer.

But even if, as Applicant claims, her renown is such that consumers would associate SERENA VENTURES with Applicant for the identified financial services, the same connotation would be applied to the cited mark SERENA in connection with the same services. In short, there is nothing inherent in the marks or the financial services at issue that would portray different meanings to consumers – as it might, for example, for services related to tennis or sports in general.

We find that the marks are quite similar, and the first *DuPont* factor favors a finding of likelihood of confusion.

D. Purchaser Sophistication

Applicant contends that "when goods or services are expensive, specialized, or marketed to expert or discerning buyers, the likelihood of confusion significantly decreases."[18] She asserts, without citation to any evidence, that her services are "marketed to institutional investors, high-net-worth individuals, and sophisticated clients through specialized, high-level advisory networks, professional referrals, and targeted investment channels. These are highly selective markets where relationships are built on reputation, expertise, and strategic fit."[19] She further argues that "[c]onsumers of Applicant's services exercise a high degree of care in selecting financial and investment partners" and "Applicant's clientele are expected to exercise considerable caution, conduct due diligence, and have industry knowledge

[18] 7 TTABVUE 9.

[19] *Id.* at 7.

…."[20] Applicant did not prove these arguments through evidence. *Gasparilla*, 2025 TTAB LEXIS 412, at *13-14 n.15. Nonetheless, by their nature, we can infer that Applicant's customers seeking and providing venture capital investment services exercise somewhat greater than ordinary care.

As to the various services identified in the cited registration, Applicant argues that "the Cited Registration targets general consumers through the sale of boutique residences and condominiums in Clearwater, Florida. These services are designed for broad public access, transactional ease, and wide visibility."[21] As discussed above, the only evidence of record regarding services purportedly offered under the cited registration is a website print out for a "boutique" residential development called "Serena by the Sea" by "Valor Capital."[22] Even if this website is related to the Registrant, we have no evidence regarding the sophistication of consumers for the real estate services identified in the cited registration. Nonetheless, we can infer (as we did for the identical and legally identical services in the application) that consumers of the investment and financial services in the cited registration exercise somewhat greater than ordinary care.

On balance, we find that the fourth *DuPont* factor tips slightly against likelihood of confusion.

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[20] *Id.* at 9.

[21] *Id.* at 7.

[22] *See* February 27, 2025 Response to Office Action at TSDR 8-12. The owner of the registration is listed as "Edgewater Valor Capital LLC." November 27, 2024 Office Action at TSDR 7.

E. Actual Confusion

Applicant asserts that there is no evidence of actual confusion.[23] The question of actual confusion is addressed in the seventh and eighth *DuPont* factors regarding the "nature and extent of any actual confusion" and 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.

There are no declarations in the record; and even if there were, uncorroborated statements of no known instances of actual confusion are of little evidentiary value. *Majestic Distilling*, 315 F.3d at 1317; *see also In re Bissett-Berman Corp.*, 476 F.2d 640, 642 (CCPA 1973) (self-serving testimony of appellant's corporate president's unawareness of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion). There is no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion in the context of this ex parte appeal. "The fact that an applicant in an ex parte case is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred." *In re Opus One, Inc.*, No. 75722593, 2001 TTAB LEXIS 707, at *19-20 (citations omitted).

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[23] 7 TTABVUE 9-10.

Moreover, the seventh and eighth *DuPont* factors are interrelated; the absence of evidence of actual confusion under the seventh *DuPont* factor is entitled to little weight in our likelihood of confusion analysis unless there also is evidence, under the eighth factor, that there has been a significant opportunity for actual confusion to have occurred. We must look at actual market conditions to the extent there is evidence of such conditions of record. *In re Guild Mortg. Co.*, No. 86709944, 2020 TTAB LEXIS 17, at *19. Here, there is no evidence that, in the actual marketplace, the same consumers have been exposed to both marks for the respective services, such that we could make a finding as to 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.

The seventh and eighth *DuPont* factors are neutral.

F. Other *DuPont* Factors

Applicant argues, again without citation to evidence:

> Another important *du Pont* factor is the fame or renown of the prior marks. Famous marks enjoy a broader scope of protection because they are more likely to be remembered and associated by consumers – here, consumers associate SERENA VENTURES with the famous public figure, Serena Williams. There is no evidence of … marketplace interaction, bad faith, or expansion plans that would increase the potential for confusion. The extent of potential confusion is minimal, especially given the specific market segments, consumer care levels, and branding distinctions outlined above.[24]

We briefly address these factors for completeness.

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[24] *Id.*

First, to the extent Applicant is arguing that her applied-for mark is famous under the fifth *DuPont* factor, the "prior mark" under this factor means the prior registration cited by the Examining Attorney. *DuPont*, 476 F.2d at 1361 ("fame of the prior mark").[25] Any fame enjoyed by Applicant's mark is irrelevant. Moreover, as is the case here, in an ex parte appeal, the fifth *DuPont* factor is treated as neutral when no evidence as to fame has been made of record. *See In re Thomas*, No. 78334625, 2006 TTAB LEXIS 135, at *18 n.11 ("Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited mark.").[26] The fifth *DuPont* factor is neutral.

We presume Applicant's argument relating to "marketplace interaction," concerns the tenth *DuPont* factor, "market interface" between Applicant and the owner of the cited registration. We must consider actual marketplace interface if we are provided with probative evidence of the same, such as a consent to register or use, an agreement designed to preclude confusion, an assignment of the mark, or laches and estoppel. *In re Opus One, Inc.*, No. 75722593, 2001 TTAB LEXIS 707, at *31. There is no relevant evidence in this case. The tenth *DuPont* factor is neutral.

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[25] That Applicant may be able to prove fame relating to her name or actual common law priority is irrelevant in this ex parte proceeding. Section 2(d) requires refusal of registration if the applicant's mark so resembles "a mark registered in the Patent and Trademark Office" as to be likely to cause confusion, and the mark cited by the Examining Attorney is a registered mark. *In re Calgon Corp.*, 435 F.2d 596, 598 (CCPA 1971) ("'[T]he question of priority of use is not germane to applicant's right to register' in this ex parte proceeding."). Such arguments could be entertained only in the context of a cancellation proceeding. Trademark Act Section 14, 15 U.S.C. § 1064.

[26] Nonetheless, as we acknowledge above, the renown of Applicant's mark (i.e., her name) could bear on our analysis of likelihood of confusion under the similarity of the marks factor, but it does not in this case. *See supra* Section II(C) ("The Marks").

Applicant's argument, applicable to the twelfth *DuPont* factor, that the "potential for confusion is minimal" (including, as Applicant alleged, "planned expansion"), is unsupported. We found that the marks at issue are similar, the respective services are identical and legally identical in part and are provided in the same or overlapping trade channels to the same or overlapping consumers, and there is no evidence suggesting that potential confusion is minimal. We presume Applicant is referring to her own notoriety in mentioning "branding distinctions." As discussed above, there is no evidence that purchasers of the financial services identified in the application and cited registration would readily associate the mark SERENA VENTURES solely with Applicant and not with Registrant. In short, the evidence of record does not demonstrate that the potential for confusion is de minimis. The twelfth *DuPont* factor is neutral.

Finally, with regard to Applicant's assertion that "there is no evidence of … bad faith," we read this as an argument that Applicant did not adopt her mark in bad faith.[27] A "party's bad faith in adopting a mark is relevant to the thirteenth *DuPont* factor, which includes any other established fact probative of the effect of use." *QuikTrip West, Inc. v. Weigel Stores, Inc*., 984 F.3d 1031, 1036 (Fed. Cir. 2021). Although bad faith – i.e., intent to trade on a senior user's goodwill – tends to show that confusion is likely, *see, e.g., Jewelers Vigilance Committee, Inc. v. Ullenberg Corp*., 853 F.2d 888, 891 (Fed. Cir. 1988), the converse is not true: evidence that a

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[27] If Applicant intended to argue that Registrant, as the junior user, adopted its mark in bad faith, there is no evidence to support this argument either.

party acted in good faith in adopting a mark has little probative value. *See, e.g., Leb. Seaboard Corp. v. R & R Turf Supply*, No. 91197241, 2012 TTAB LEXIS 29, at *29 ("Good faith adoption of a mark will not prevent a finding of likelihood of confusion."); *Mag Instrument, Inc. v. Brinkmann Corp*., No. 91163534, 2010 TTAB LEXIS 322, at *33 (evidence that a party is seeking to register a mark in good faith does very little to obviate a finding of a likelihood of confusion and is not a significant factor in our likelihood of confusion analysis). The thirteenth *DuPont* factor also is neutral.

G. Weighing the Likelihood of Confusion Factors

As discussed earlier, the last step in analyzing a claim under Section 2(d) is to "weigh the *DuPont* factors used in [our] analysis **and** explain the results of that weighing." *Charger Ventures*, 64 F.4th at 1384 (emphasis in original). The first, second, and third *DuPont* factors weigh heavily in favor of likelihood of confusion, given the substantial similarity of the marks, the in-part identity and legal identity of the services and overlap in channels of trade and consumers as to these services. These factors outweigh the fourth *DuPont* factor, which weighs slightly against likelihood of confusion. The fifth, seventh, eighth, tenth, twelfth, and thirteenth *DuPont* factors are neutral.

Accordingly, we find Applicant's standard-character mark SERENA VENTURES as used in connection with the identified services so resembles the cited mark SERENA (also in standard characters) for the services listed in the cited registration as to be likely to cause confusion under Section 2(d) of the Trademark Act, notwithstanding any purchaser sophistication.

Decision

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