This Opinion is Not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re MAP Elite & MAP Prospects LLC

Serial No. 98651023

Deirdre M. Kvale, DMK Intellectual Property Law PLLC,
for MAP Elite & MAP Prospects LLC.

Sandra Snabb, Trademark Examining Attorney, Law Office 120,
Joshua Toy, Managing Attorney.

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

Opinion by O'Connor, Administrative Trademark Judge:

MAP Elite & MAP Prospects LLC ("Applicant") seeks registration on the Principal Register of the mark shown below (ADVANCED PLAYER disclaimed) for services ultimately identified as "sports training services in the field of hockey training programs; sports training services in the field of competitive hockey player development and training programs," in International Class 41:



[1]

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that the mark, when used in connection with the identified services, is likely to cause confusion, mistake or deception with the registered mark APX in standard characters for:

> Consulting services in the fields of fitness and exercise; physical fitness and exercise studio services, namely, providing group and individual exercise, pilates and aerial pilates instruction, classes, equipment, and facilities; providing physical fitness and exercise studio services, namely, pilates and aerial pilates instruction, classes, training techniques, pilates and aerial pilates apparatuses, equipment and facilities; health club services, namely, providing instruction and equipment in the fields of fitness and exercise, in International Class 41

(the "Cited Registration" or "Cited Mark").[2]

When the refusal was made final, Applicant requested reconsideration and filed this appeal, which was suspended. The application was remanded to the Examining Attorney to consider the request for reconsideration, which was denied. The appeal

[1] Application Serial No. 98651023 was filed on July 16, 2024 pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's averment of a bona fide intent to use the mark in commerce. Applicant describes the mark as "consist[ing] of a polygon with the literal elements 'APX ADVANCED PLAYER EXP' inside the polygon and including polygon and star shapes inside the polygon above the literal elements 'APX ADVANCED PLAYER EXP' and stylized stars and stripes below the literal elements." Color is not claimed as a feature of the mark.

[2] Registration No. 6380709 issued on June 8, 2021 on the Principal Register.

was resumed, and Applicant and the Examining Attorney filed briefs. For the reasons that follow, we affirm the refusal to register.

I. Likelihood of Confusion

"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 to deceive." *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the "*DuPont* factors"). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379-80 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See Charger Ventures*, 64 F.4th at 1381 ("In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis.") (citation omitted). In determining likelihood of confusion, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

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

We first consider the second and third *DuPont* factors, "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration," and the "similarity or dissimilarity of established, likely-to-continue trade channels," and the classes of consumers. *DuPont*, 476 F.2d at 1361. With each factor, our determination must be based not on evidence of use, but on the identification of services in the application and Cited Registration. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018) ("The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration, and not on real-world conditions.") (emphasis omitted).

The goods or services "need not be identical or even competitive to find a likelihood of confusion." *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *4 (citations omitted). "They need only be 'related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] emanate from the same source.'" *Id.* at *4-5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012)).

Evidence of relatedness may include materials showing that the relevant goods or services "are advertised together or sold by the same manufacturer or dealer." *In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *30 (quoting *In re Ox Paperboard, LLC*, No. 87847482, 2020 TTAB LEXIS 266, at *15). The issue is not whether purchasers would confuse the services, but rather whether there is a likelihood of

confusion as to the source of the services. *L'Oreal S.A. v. Marcon*, No. 91184456, 2012 TTAB LEXIS 77, at *20 (citing *In re Rexel Inc.*, No. 73241423, 1984 TTAB LEXIS 57, at *2). It is sufficient for likelihood of confusion if relatedness is established for any item encompassed by the recitation of goods or services within a particular class in the application. *See, e.g., Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336 (CCPA 1981).

Applicant's services are "sports training services in the field of hockey training programs; sports training services in the field of competitive hockey player development and training programs." The services identified in the Cited Registration include "consulting services in the fields of fitness and exercise; physical fitness and exercise studio services, namely, providing group and individual exercise, pilates and aerial pilates instruction, classes, equipment, and facilities; … health club services, namely, providing instruction and equipment in the fields of fitness and exercise."

The Examining Attorney submitted evidence to show that the same entity commonly offers the services of both Applicant and registrant, or legally equivalent services, under the same mark. *See In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *23-24 (When considering third-party websites where the services "may not be explicitly described at all, or may be described in colloquial language that does not track the technical language of acceptable identifications of goods and services in applications and registrations, including those involved here,"

Board "must determine the nature of the services that are offered, and decide whether they fall within the full scope of the language in the involved identifications.").

This evidence includes website printouts for the following third parties that offer hockey training services as well as general fitness and exercise programs, including in a studio or health club environment, under a single mark:

- The St. James performance club and gym (offering hockey training services and group fitness classes)[3]
- Performance Health & Fitness (offering hockey training services and group fitness classes)[4]
- Fortis Academy (offering hockey training services and group fitness classes)[5]
- Top-Tier Performance Training (offering hockey training services and group fitness classes)[6] and
- Sanford Sports (offering hockey training services and fitness studio services).[7]

Three of these entities also provide the "consulting services in the fields of fitness and exercise" identified in the Cited Registration specifically for hockey players, namely, Performance Health & Fitness (Performance Elite Hockey Training Program instructed by training staff at Performance Health & Fitness to teach athletes "proper techniques and skills to prevent injuries, and progress to the next step in their

[3] June 4, 2025 Final Office Action, TSDR 11-29.

[4] *Id.* at 30-42.

[5] *Id.* at 43-53.

[6] *Id.* at 70-80.

[7] December 23, 2025 Denial of Request for Reconsideration, TSDR 45-53.

athletic careers"),[8] Top-Tier Performance Training (owned by a former college hockey player and certified personal trainer who uses "the latest research and most effective methods" to help athletes "reach their fitness and performance goals" including an off-ice strength and conditioning program)[9] and Sanford Sports (offering "sports performance training that targets the specific muscle groups you depend on as a hockey player").[10]

In addition, the evidence includes website printouts for several hockey training programs that also provide hockey-specific consulting services in the fields of fitness and exercise, under a single mark:

- Method Hockey offers sports performance training in the field of hockey including evaluations, customized programs and nutrition guidance for "the Hockey-Athlete."[11]
- Hockey Hut Training Center offers hockey programs including sports performance and personal training with assessment by a trainer and various exercises.[12]
- Elite Hockey Science Reston offers hockey training services beginning with consultation and including off-ice strength & conditioning.[13]
- Topline Performance Training offers hockey training services including off-ice performance training to "[b]uild muscle, gain speed, and prioritize mobility;" "[p]layers will work through a series of explosive push, pull, and carry movements to generate power while learning correct form."[14]

[8] June 4, 2025 Final Office Action, TSDR 30.

[9] *Id.* at 70.

[10] December 23, 2025 Denial of Request for Reconsideration, TSDR 45-47.

[11] June 4, 2025 Final Office Action, TSDR 59-60.

[12] *Id.* at 66-68.

[13] December 23, 2025 Denial of Request for Reconsideration, TSDR 5-8.

[14] *Id.* at 27-28.

This evidence supports a finding that Applicant's "sports training services in the field of hockey training programs; sports training services in the field of competitive hockey player development and training programs" are related to one or more of registrant's "consulting services in the fields of fitness and exercise," "physical fitness and exercise studio services, namely, providing group and individual exercise" and/or "health club services, namely, providing instruction and equipment in the fields of fitness and exercise." *See Detroit Athletic*, 903 F.3d at 1306 (crediting relatedness evidence that several third-party apparel retailers use the same mark for the goods and services at issue because "[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both"). As the Federal Circuit has stated, evidence that "a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis." *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002). *See also In re Davey Prods. Pty*, No. 77029776, 2009 TTAB LEXIS 524, at *15 (relatedness was supported by evidence of two third-party webpages showing that "water pumps and/or electric motors, such as applicant's, and air compressors, such as registrant's, can be manufactured and sold by a single source").

That a number of these third parties offer both sports training services in the field of hockey and consulting services in the fields of fitness and exercise, including specifically for hockey players, shows not only that the same party offers the services of both Applicant and registrant, but that these services are inherently related and complementary. Evidence made of record by Applicant itself supports this intrinsic

relatedness. Applicant provided an article stating that "[s]ports training refers to the systematic process of preparing an athlete **physically**, technically, tactically, mentally, and emotionally to perform optimally in their chosen sport. It involves a planned series of activities designed to improve specific skills, **enhance physical fitness**, develop strategic understanding, and foster mental resilience."[15] "Such complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion." *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567 (Fed. Cir. 1984).

This inherent, complementary relationship is further supported by the Examining Attorney's evidence of 18 use-based third-party registrations covering Applicant's and registrant's services, or legally equivalent services,[16] including:

Mark/Reg. No.	Relevant Services
BLOODLINE HOCKEY, Reg. No. 4951195[17]	Consulting services in the fields of fitness and exercise; sports training services in the field of hockey
ELEV802 Reg. No. 6721931[18]	Providing sports training services in the field of hockey; providing personal training services, namely, strength and conditioning training
PHYZEKE FITNESS Reg. No. 3897390[19]	Consulting services in the fields of fitness and exercise; health club services, namely, providing instruction and

[15] December 3, 2025 Request for Reconsideration, TSDR 82 (printout from sportsbee.org, emphasis added) (stating further that one type of sports training, general physical training, "[f]ocuses on overall fitness, strength, and endurance applicable across multiple sports").

[16] *See Country Oven*, 2019 TTAB LEXIS 381, at *10-11 ("Just as we must consider the full scope of the goods and services as set forth in the application and registration under consideration, we must consider the full scope of the goods and services described in a third-party registration.").

[17] June 4, 2025 Final Office Action, TSDR 99-100.

[18] *Id.* at 85-86.

[19] February 13, 2025 Nonfinal Office Action, TSDR 9-10.

Mark/Reg. No.	Relevant Services
	equipment in the field of physical exercise; sports training services
FITNESS UNCHAINED Reg. No. 5867237[20]	Sports training services; health club services, namely, providing instruction and equipment in the field of physical exercise
TOUCHSTONE CLIMBING Reg. No. 4280291[21]	Health club services, namely, providing instruction and equipment in the field of physical exercise; sports training services in the field of indoor rock climbing
CARP and design Reg. No. 6392240[22]	Sports training services; health club services, namely, providing instruction and equipment in the field of physical exercise
WILD CARD BOXING CLUB Reg. No. 3853213[23]	Consulting services in the fields of fitness and exercise; health club services, namely, providing instruction and equipment in the field of physical exercise; sports training services
XPFITNESS and design Reg. No. 5888273[24]	Health club services, namely, providing instruction and equipment in the field of physical exercise; sports training services
CANINE CROSS-TRAINING Reg. No. 6945028[25]	Health club services, namely, providing instruction and equipment in the field of physical exercise; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; sports training services
MYSYZE Reg. No. 6545694[26]	Consulting services in the fields of fitness and exercise; health club services, namely, providing instruction and equipment in the field of physical exercise; sports training services
	Health club services and sports training services, namely, providing instruction and equipment in the field of physical exercise and sports conditioning

[20] *Id.* at 11-12.

[21] *Id.* at 13-14.

[22] *Id.* at 15-16.

[23] *Id.* at 17-18.

[24] *Id.* at 19-20.

[25] *Id.* at 21-22.

[26] *Id.* at 23-24.

Mark/Reg. No.	Relevant Services
Reg. No. 5213944[27]	
REACTIVE COUNTERING TRAINING Reg. No. 5247964[28] ICI INTERNATIONAL COACHES INSTITUTE & design Reg. No. 4689870[29]	Athletic services, namely, sports training services; fitness evaluation and consultation services, namely, physical fitness assessment and consultation services Consulting services in the fields of fitness and exercise; sports training services
LEISURE LEAGUES & design Reg. No. 6234765[30]	Sports training services in the field of youth and adult sports for entertainment and cultural purposes; physical fitness consultation and advisory services; fitness and health club services for physical exercise, and soccer club services
FEELTHISFITNESS Reg. No. 6201183[31]	Consulting services in the fields of fitness and exercise; physical fitness training of individuals and groups; sports training services
SPIRIT CLUB Reg. No. 5965677[32]	Consulting services in the fields of fitness and exercise; health club services, namely, providing instruction and equipment in the field of physical exercise; physical fitness studio services, namely, providing group exercise instruction, equipment, and facilities; sports training services
PRECISION SPORT SCIENCE Reg. No. 7638645[33]	Consulting services in the fields of fitness and exercise; sports training services
FMS Reg. No. 4121682[34]	Consulting services in the fields of fitness and exercise; sports training services

[27] *Id.* at 25-26.

[28] June 4, 2025 Final Office Action, TSDR 81-82.

[29] *Id.* at 83-84.

[30] *Id.* at 89-90.

[31] *Id.* at 91-92.

[32] *Id.* at 93-94.

[33] *Id.* at 95-96.

[34] *Id.* at 97-98.

One of these registrations, for BLOODLINE HOCKEY, expressly includes "sports training services in the field of hockey," which is nearly identical to Applicant's services, as well as registrant's "consulting services in the fields of fitness and exercise." Another registration, for ELEV802, expressly includes "providing sports training services in the field of hockey" and "providing personal training services, namely, strength and conditioning training," which falls within the full scope of registrant's "consulting services in the fields of fitness and exercise." Although not necessarily evidence that the marks have been used or of the extent of such use, third party, use-based registrations that cover services from both an application and a cited registration are relevant to show that the services are of a type that may emanate from a single source under one mark. *In re Guild Mortg. Co.*, No. 86709944, 2020 TTAB LEXIS 17, at *13; *In re Mucky Duck Mustard Co.*, No. 73603019, 1988 TTAB LEXIS 11, at *6, *aff'd per curiam*, 864 F.2d 149 (Fed. Cir. 1988). Thus, these two registrations provide further support for relatedness.

In addition, many of the third-party registrations cover "sports training services" generally as well as either registrant's "consulting services in the fields of fitness and exercise" or "health club services, namely, providing instruction and equipment in the fields of fitness and exercise." Even though the sports training services in these registrations are not expressly associated with hockey, we must give the identifications their full scope and deem them to include sports training for hockey. *See Country Oven*, 2019 TTAB LEXIS 381, at *10-11.

Applicant nonetheless argues that the services are different, primarily relying on asserted differences in the channels of trade and classes of consumers, which we address below. To the extent Applicant argues that "Registrant's services do not include sports training services for hockey player development,"[35] the Examining Attorney does not contend that the services are identical. As noted above, the law is clear that identity of services is not necessary; for confusion to be likely, the services need only be related in the sense that consumers could mistakenly believe that the services originate from the same source. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316 (Fed. Cir. 2003); *In re Shell Oil Co.*, 992 F.2d 1204, 1207 (Fed. Cir. 1993). Although Applicant's services are limited to the field of hockey, registrant's services are not limited to any particular sport or activity. The evidence above supports a finding that Applicant's "sports training services in the field of hockey training programs" can be offered by the same source as registrant's "consulting services in the fields of fitness and exercise," "physical fitness and exercise studio services, namely, providing group and individual exercise…" and "health club services, namely, providing instruction and equipment in the fields of fitness and exercise," often under the same mark, such that consumers may believe Applicant's and registrant's services come from the same source.

Applicant argues that its services are provided at ice arenas, citing the declaration of its Chief Executive Officer, Joel L. Owens, who testified that "Applicant's hockey

[35] 6 TTABVUE 10.

training services are provided at various ice rink facilities."[36] Applicant further states that registrant's services "are not of the type generally provided at ice rink facilities."[37] There is nothing in the Cited Registration, however, that restricts the services to those provided at a facility other than an ice rink. We must determine whether there is a likelihood of confusion based on the services as they are described in the application and Cited Registration. *See Detroit Athletic*, 903 F.3d at 1307. And where an identification is unrestricted, we must presume that the services are provided in all of the normal trade channels for such services to all potential purchasers thereof. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 948 (Fed. Cir. 2000) (affirming Board finding that where the identification is unrestricted, "we must deem the goods to travel in all appropriate trade channels to all potential purchasers of such goods"); *see also Coach Servs.*, 668 F.2d at 1370 (absent limitation "goods are presumed to travel in all normal channels ... for the relevant goods").[38]

Evidence in the record shows that the normal channels of trade for the respective services are not rigidly defined and can indeed overlap. The record includes websites

[36] 6 TTABVUE 9 (citing Exhibit E to May 6, 2025 Response to Office Action, TSDR 26, Owens Decl. ¶ 2).

[37] 6 TTABVUE 10 (citing Exhibit H to May 6, 2025 Response to Office Action, TSDR 41, a website printout for third-party PHYZEKE FITNESS, which does not appear to offer services at an ice rink facility).

[38] The Examining Attorney states that "the services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are 'presumed to travel in the same channels of trade to the same class of purchasers.'" 8 TTABVUE 15 (citing, inter alia, *In re Viterra*, 671 F.3d 1358, 1362 (Fed. Cir. 2012)). This is an incorrect statement of the law. The cited presumption applies only where the goods or services are identical, which is not the case on this appeal. *See Viterra*, 671 F.3d at 1362 (prefacing statement about presumption with observation that the applicant conceded the goods at issue were identical).

for entities that offer registrant's services within a facility that also houses an ice rink. For example, Fortis Academy's website indicates that the gym training component of its hockey training program is offered at the same locations as its adult fitness program, at least one of which is at an ice arena.[39] The website of another entity that provides sports training (including for hockey players), Top-Tier Performance Training, indicates that it first operated out of a garage, then within an ice center, then at its own gym location.[40] Other entities offer hockey training services and registrant's services at the same facilities, which may or may not house both an ice rink and a gym.[41]

These examples belie Applicant's next argument, that the services differ because its services "are directed to skilled hockey players and are promoted through advertising in hockey magazines, word of mouth, coaches, youth hockey organizations and ice rink advertising."[42] The Examining Attorney's evidence of websites offering the services of both Applicant and registrant shows that the services of both parties are marketed and offered in at least one common channel of trade, namely, by entities

[39] *See* June 4, 2025 Final Office Action, TSDR 43, 48-53 (website indicating that both programs are offered at Fortis Gym inside Champions Hall and Fortis Gym inside Richfield Ice Arena).

[40] *See id.* at 70-72.

[41] *See, e.g.*, December 23, 2025 Denial of Request for Reconsideration, TSDR 20-21 (website for Topline Performance Training boasts facilities "specifically designed to challenge your limits and develop your abilities both on and off the ice" including services offered at venues with rinks and gyms); June 4, 2025 Final Office Action, TSDR 30-32 (Performance Health & Fitness offers an Elite Hockey Training Program (with images of people at an arena and in a gym) as well as group fitness classes (with images of people on stationery bikes).

[42] 6 TTABVUE 10. Like Applicant's first argument, these arguments pertain more to the channels of trade and classes of consumers than to relatedness of the services.

that provide both hockey training programs and consulting services and group and individual instruction in the fields of fitness and exercise. The evidence also shows an overlap in consumers to the extent that those interested in hockey training programs may seek to optimize their performance in the sport through sport-specific physical fitness and exercise, including by consulting with a professional or expert in the field. *Cf. In re Toshiba Med. Sys. Corp.*, No. 79046106, 2009 TTAB LEXIS 447, at *21 (website evidence showed same or overlapping channels of trade and classes of customers).

Applicant also argues that the Examining Attorney's evidence of relatedness of the services is de minimis, because

> [n]one of the examples cited by the Examiner use a mark that provides context and meaning unique to one service to the exclusion of another service. Applicant's APX ADVANCED PLAYER EXP & Design is unique to Applicant's services; similar to MethodIceHockey.com and MyHockeyHut.com, for example, cited by the Examiner which both incorporate "HOCKEY" to identify the source of hockey sports training services including on and off ice hockey training. As in the case with MethodIceHockey.com and HockeyHut.com, in view of the commercial impression of Applicant's mark, consumers are not likely to associate Applicant's services with the fitness, exercise and health club services provided under Registrant's mark.[43]

We disagree that the Examining Attorney's evidence of relatedness is de minimis. Taken together, the evidence of 18 third-party registrations and nine third-party uses detailed above shows that the same parties provide the services of both Applicant and registrant, under the same mark, and that third parties have registered the same

[43] *Id.*

mark for use with those services or similar services. Given the nature of the involved services, this evidence is sufficient in quantity and quality to show that Applicant's and registrant's services are related. *See, e.g., In re C.H. Hanson Co.*, No. 77983232, 2015 TTAB LEXIS 357, at *17 (six websites offering both goods under the same mark, coupled with five marks registered for the goods, supported relatedness). The evidence also shows an inherent, complementary relationship between the services.

Nor do we see how the wording ADVANCED PLAYER EXP "provides context and meaning unique" to Applicant's services to the exclusion of registrant's services such that consumers are not likely to associate the respective services. There is nothing in registrant's identified services that excludes their use by hockey players and it would be improper to rely on the words ADVANCED PLAYER EXP in Applicant's mark to read an exclusion of hockey players into the Cited Registration. *See, e.g., In re La Peregrina Ltd.*, No. 78676199, 2008 TTAB LEXIS 38, at *7 ("An applicant may not restrict the scope of the goods covered in the cited registration by argument or extrinsic evidence.").

The second and third *DuPont* factors weigh in favor of a likelihood of confusion.

B. Similarity or Dissimilarity of the Marks

When considering the first *DuPont* factor, the similarity or dissimilarity of the marks, we compare the marks "in their entireties as to appearance, sound, connotation, and commercial impression." *Detroit Athletic*, 903 F.3d at 1302-03 (quoting *DuPont,* 476 F.2d at 1361). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, No.

87075988, 2018 TTAB LEXIS 170, at *13 (citation omitted), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Fuente Mktg. v. Vaporous Techs., LLC*, 172 F.4th 1337, 1341-42 (Fed. Cir. 2026) (quoting *Coach Servs.,* 668 F.3d at 1368 (cleaned up)).

Because similarity is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components. *See, e.g.*, *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). "No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone." *In re Electrolyte Labs. Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990). Nonetheless, "in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *Detroit Athletic*, 903 F.3d at 1305 (quoting *Nat'l Data*, 753 F.2d at 1058).

"[S]imilarity is not a binary factor but is a matter of degree." *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (citation omitted). Marks must be considered in light of the fallibility of memory, *id.* at 751, and "[t]he focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks." *In re St. Julian Wine Co.*, No. 87834973, 2020 TTAB LEXIS 196, at *13 (citations omitted).

With these principles in mind, we compare Applicant's mark, 

, and the Cited Mark, APX in standard characters. In refusing registration, the Examining Attorney determined that the marks are confusingly similar because Applicant's mark incorporates the Cited Mark in its entirety and APX is the dominant element of the applied-for mark.[44] The Examining Attorney determined that the other words and design element of Applicant's mark do not obviate the similarity between the marks.[45] Applicant disagrees for several reasons, including that the Examining Attorney failed to consider the entirety of Applicant's mark, focusing only on the letters APX to the exclusion of the other elements.[46]

When evaluating a composite mark consisting of words (or letters) and a design, the word portion is normally accorded more weight because it is likely to make a greater impression on purchasers, be remembered by them, and be used to refer to or request the goods or services. *See, e.g., Viterra*, 671 F.3d at 1366 ("the verbal portion of a word and design mark likely will be the dominant portion … [t]his makes sense given that the literal component of brand names likely will appear alone when used in text and will be spoken when requested by consumers"). Of the literal elements in

[44] 8 TTABVUE 5.

[45] *Id.* at 5-7, 9.

[46] 6 TTABVUE 5.

Applicant's mark, APX appears in the center in bold white letters that are much larger than the words ADVANCED PLAYER EXP appearing below APX. Applicant also disclaimed ADVANCED PLAYER, conceding that those words are descriptive of its services and therefore non-source identifying. *See In re Pollio Dairy Prods. Corp.*, No. 73596577, 1988 TTAB LEXIS 45, at *3, n. 4 ("By its disclaimer of the word LITE, applicant has conceded that the term is merely descriptive as used in connection with applicant's goods.") (citing *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 1969 TTAB LEXIS 48, at *6, *aff'd,* 453 F.2d 1296 (CCPA 1972); *see also Cunningham*, 222 F.3d at 947 ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion.") (citation omitted; cleaned up); *accord Charger Ventures*, 64 F.4th at 1382 (although disclaimed matter remains part of the mark and must be considered, it may technically differentiate a mark but do little to alleviate confusion; it is permissible for the Board "to focus on dominant portions of a mark") (citing *Detroit Athletic*, 903 F.3d at 1305).

With regard to the design portion, Applicant argues that

> Applicant's mark includes a design as shown above, which was given no weight. *See, Non Final Office Action, pp 3-4, Final Office Action, page 4*. Applicant acknowledges that the cited Registration is a standard character mark without any limitation to stylization or font as stated by the Examiner. However, Applicant's design is more than a stylized form of Registrant's mark. Applicant's mark is a composite mark including the words APX ADVANCED PLAYER EXP embedded in shield shaped polygon with stars and stripes in stylized form below the words APX ADVANCED PLAYER EXP. While words are normally accorded greater weight in a composite mark, the design

> elements of the mark cannot be ignored. *See, Trek Bicycle Corporation v. Christina Isaacs*, [2023 U.S. App. LEXIS 30357] (Fed. Circ. 2023) citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed Cir. 2012). Applicant's design adds to the commercial impression of its mark. Specifically, the design provides an "all American" themed imagery that contributes to the commercial impression of Applicant's mark.[47]

Although the Examining Attorney's Office Actions did not expressly discuss the features of the design element, they made clear that the design was considered less dominant in Applicant's mark than the letters APX.[48] This was of particular importance because the Cited Mark, as a standard character mark, may be displayed in any manner of display, including a manner similar to that in Applicant's mark. *See Viterra*, 671 F.3d at 1363 ("a standard character mark is not limited to any particular font, size, style, or color"); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(c)(iii) (May 2026).

Although the verbal element does not always dominate in a composite mark and we must consider Applicant's mark in its entirety, here we find that the design is less prominent than the letters APX. The outer polygon is a geometric carrier that consumers are unlikely to perceive as source-identifying. *See, e.g., In re Dixie Rests.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (word DELTA was dominant in mark THE DELTA CAFE and design in part because "the design is an ordinary geometric shape that serves as a background for the word mark"). The shapes above the letters are unlikely to be noticed or recalled by consumers. Although the stars and stripes below

[47] *Id.* at 6-7.

[48] *See, e.g.*, June 4, 2025 Final Office Action, TSDR 5. *See also* 8 TTABVUE 6.

the letters could be perceived as lending an all-American connotation, we are not persuaded that they contribute source-identifying significance to the overall commercial impression of Applicant's mark. Certainly, the design in Applicant's mark creates some differences visually from the Cited Mark. But considering Applicant's mark as a whole, the eye is drawn to the letters APX, which are most likely to be impressed upon a purchaser's memory and used to identify the source of the services. *Viterra*, 671 F.3d at 1366 (citing *Alzheimer's Found. of Am., Inc. v. Alzheimer's Disease & Related Disorders Ass'n, Inc.*, 796 F. Supp. 2d 458, 465 (S.D.N.Y. 2011) (although a composite mark consisting of both word and design elements "must be considered in its entirety, trademark law recognizes that the word portion is often more likely to be impressed upon a purchaser's memory because it is the word that purchasers use to request the goods and/or services"); *see also Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, No. 92079409, 2024 TTAB LEXIS 289, at *20 ("[B]ecause LOOK appears in large, bold font, and the design elements merely consist of geometric patterned blocks that make less of an impression, LOOK stands out as the focus of the mark."). And here the visually prominent letters APX, which are an acronym for the words ADVANCED PLAYER EXP, invite consumers to use the acronym as a shorthand way of remembering and referring to the mark.

APX, the dominant element of Applicant's mark, is identical to the entirety of the Cited Mark. The marks are similar in appearance and sound to the extent they both contain the letters APX.

As for connotation, Applicant asserts that, by itself, APX has no meaning or context, as illustrated by the fact that it has been registered by third parties for many different types of goods and services.[49] When used in its mark, however, Applicant argues that APX conveys a very different meaning and commercial impression from the Cited Mark because it is an acronym for the words **A**DVANCED **P**LAYER E**X**P. In view of its sports-related services, Applicant contends that these words create an impression of "a higher competitive experience for 'sport' players," whereas "Registrant's mark for fitness, exercise and health club services would not be associated with ADVANCED PLAYER EXP since its services are not of the type focused on sports 'player' training nor player's experience."[50] In support, Applicant cites the definition of PLAYER, which "generally refers to a person who plays a sports game or competitive team sport"[51] and results of trademark searches it conducted on

[49] 6 TTABVUE 5 (citing Exhibit A to December 3, 2025 Request for Reconsideration, TSDR 11-81).

We do not consider Applicant to cite these registrations for commercial or conceptual weakness of the Cited Mark under the sixth *DuPont* factor, but only to show that APX does not have any particular meaning on its own and that it takes on a unique meaning when used with the additional words in Applicant's mark. *See* 6 TTABVUE 5-6; December 3, 2025 Request for Reconsideration, TSDR 9. Any argument that these other registrations show the weakness of APX would not be persuasive in any event, because the goods and services covered by them are not at all similar to the services involved here. *See Omaha Steaks Int'l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (Fed. Cir. 2018) (sixth *DuPont* factor considers "[t]he number and nature of similar marks in use on similar goods") (quoting *DuPont*, 476 F.2d at 1361).

[50] 6 TTABVUE 6 (concluding that Applicant's mark "has no meaning in the context of Registrant's services but provides meaning, context and a commercial impression unique to Applicant's services as it relates to the quality and intensity of its hockey sports training services for hockey **players**").

[51] *Id.* at 8 (citing Exhibit C to December 3, 2025 Request for Reconsideration, TSDR 86).

the USPTO website that found registered marks with the word PLAYER for sports training services but not for health club or fitness or exercise studio services.[52]

We disagree that the additional wording in Applicant's mark or the nature of its services lend such a different meaning to the letters APX in the two marks. First, there is nothing in the respective services that necessarily causes the term APX, an abbreviation of the additional words ADVANCED PLAYER EXP, to have a significantly different connotation when used in Applicant's mark as opposed to registrant's mark. The record shows that registrant's services are often used by athletes (including hockey players) to improve their fitness and enhance their sports training through appropriate exercises, such that there is nothing about the word PLAYER that excludes consumers of registrant's services. The trademark search results and registrations that Applicant provided do not show that consumers would consider PLAYER to give a distinct meaning to the letters APX when those letters are used with Applicant's services as opposed to registrant's services. Although PLAYER in Applicant's mark does create the impression of a participant in a sport or game, again, this is not exclusive of consumers of registrant's services. This is illustrated by the fact that two of the registrations Applicant provided cover services that are encompassed by or similar to those of the Cited Registration, MVP ATHLETIC CLUB for "athletic club services, namely, providing fitness, sports and

[52] *Id*. at 6 (citing Exhibits D-G to December 3, 2025 Request for Reconsideration, TSDR 88-132).

exercise facilities and instruction"[53] and PLAYERDASH for "sports and fitness services, namely, conducting coaching services in the field of sports and fitness."[54]

Consumers encountering Applicant's mark may associate the letters APX with the words ADVANCED PLAYER EXP, and understand that EXP is short for experience. However, from the standpoint of consumers with a general rather than specific recollection of the Cited Mark APX, who may not understand the letters to have any particular meaning, the meaning of the letters in Applicant's mark will not necessarily be different; in fact, when such consumers separately encounter Applicant's mark, they may perceive it as providing information about the significance of the letters APX in the Cited Mark. *Cf. Toshiba Med. Sys.*, 2009 TTAB LEXIS 447, at *15 (VANTAGE TITAN "more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices").

Moreover, consumers receive and retain general impressions of marks and some consumers may not notice the additional words in much smaller text in Applicant's mark. Even those who notice the additional words are likely to shorten the mark to APX, which is the entirety of the Cited Mark. *See Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 TTAB LEXIS 464, at *45 (quoting *In re Bay State Brewing Co.*, No. 85826258, 2016 TTAB LEXIS 46, at *9 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 815 (CCPA) (Rich, J. concurring: "the users of language have a universal habit

[53] December 3, 2025 Request for Reconsideration, TSDR 115; 133 (acronymfinder.com printout stating that MVP stands for "Most Valuable Player" in the context of sports).

[54] *See id.* at 117-18.

of shortening full names from haste or laziness or just economy of words")). Confusion is often found in such circumstances. *See, e.g.*, *Charger Ventures*, 64 F.4th at 1381-82 (holding SPARK LIVING and SPARK confusingly similar); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557 (CCPA 1975) (holding BENGAL LANCER and design and BENGAL confusingly similar); *Double Coin Holdings, Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, at *29 (holding ROAD WARRIOR and WARRIOR (stylized) confusingly similar); TMEP § 1207.01(b)(iii) (citing cases).

Although the marks are not identical, for the reasons set forth above, the Examining Attorney did not improperly focus on the letters APX to the exclusion of the other elements in Applicant's mark. Instead, comparing the marks in their entireties in view of the applicable legal principles, we agree that the marks are similar in appearance, sound, connotation and overall commercial impression. The first *DuPont* factor weighs in favor of likelihood of confusion.

C. Sophistication of Consumers and Care in Purchasing

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." *DuPont*, 476 F.2d at 1361. "Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect." *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1376 (Fed. Cir. 2005) (citation omitted); *see also In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985) (concluding that because only sophisticated purchasers exercising great care would purchase the relevant goods,

there was no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED). Applicant argues that hockey training services are expensive and are not an impulse purchase, citing the testimony of its CEO, who testified that:

> Hockey training services provided under the APX ADVANCED PLAYER EXP & Design are provided by invitation only and are expensive. To be considered, a player must be an "A" level player (Squirt – Bantam) or higher; or varsity or Junior level player. The player's "on-ice" game statistics and performance are reviewed and input and recommendations from the player's coaches are used to evaluate the player for inclusion in the program.[55]

Applicant further argues that "[t]o the extent Registrant's consulting and studio services provide personalized fitness and exercise, the personalized nature of its services and Applicant's services reduces the likelihood of confusion and any misassociation between Applicant's services and Registrant's service."[56] The Examining Attorney does not deny that Applicant's services are expensive and not an impulse purchase and that registrant's services are of a personalized nature, but disagrees that this prevents a likelihood of confusion.[57]

Considering the identifications themselves, as we must, Applicant's services are not limited to those for elite or competitive players but include "sports training services in the field of hockey training programs," which are broad enough to include participants of all skill and interest levels. The identification of registrant's services

[55] Applicant's May 6, 2025 Response to Office Action, TSDR 26, Owens Decl. ¶ 3.

[56] 6 TTABVUE 11.

[57] *See* 8 TTABVUE 15.

does not specify any particular quality or skill level. Apart from Mr. Owens' general testimony, Applicant did not refer to any information about the cost of the services, but the record contains some pricing information. The evidence shows both Applicant's and registrant's services offered at prices ranging from approximately $20-25 for group fitness classes or group hockey training lessons, over $100 for private fitness or hockey lessons, with monthly health club memberships available from approximately $100-$300 per month[58] and hockey camps offered in the $200-600 range with high school and varsity prep offerings costing as much as $2600.[59]

But the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or that they are immune from source confusion. *Charger Ventures*, 64 F.4th at 1383; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d. 1317, 1325 (Fed. Cir. 2014). Where, as here, the purchasers include those with greater sophistication as well as ordinary consumers, our decision must "be based on the least sophisticated potential purchasers." *Stone Lion*, 746 F.3d. at 1325 (cleaned up).

The nature and cost of the services, particularly those of Applicant, indicate that the services are not purchased on impulse and that consumers are likely to use a moderate degree of care in their purchase decisions. On the record of this case, we find that the fourth *DuPont* factor weighs slightly against a likelihood of confusion.

[58] *See, e.g.,* May 6, 2025 Response to Office Action, TSDR 53, 92, 99; June 4, 2025 Final Office Action, TSDR 16.

[59] *See, e.g.*, June 4, 2025 Final Office Action, TSDR 13, 44-46.

II. Balancing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there is evidence and argument and "explain the results of that weighing" and "the weight [we] assigned to the relevant factors." *Charger Ventures*, 64 F.4th at 1384. We find that Applicant's "sports training services in the field of hockey training programs; sports training services in the field of competitive hockey player development and training programs" are related and complementary to registrant's "consulting services in the fields of fitness and exercise," "physical fitness and exercise studio services, namely, providing group and individual exercise" and "health club services, namely, providing instruction and equipment in the fields of fitness and exercise." The evidence also supports a finding that the channels of trade and classes of consumers overlap. The second and third *DuPont* factors thus weigh in favor of a likelihood of confusion. Comparing the marks 

and APX in their entireties, we find that the marks are similar, due to the shared dominant APX portion. Although the other elements of Applicant's mark present differences, they do not outweigh the similarities. Accordingly, the first *DuPont* factor also weighs in favor of a likelihood of confusion. Consumers of the services are likely to use a moderate degree of care in purchasing, with the fourth *DuPont* factor weighing slightly against

a likelihood of confusion. No other *DuPont* factor weighs against a likelihood of confusion.

Balancing the factors, we conclude that confusion is likely between Applicant's mark and registrant's mark for their respective identified services.

Decision:

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