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Mailed: June 10, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re EquipKeyCo, LLC

Serial No. 97344289

Rob L. Phillips of FisherBroyles LLP,
for EquipKeyCo. LLC.

Caitlin Cordani, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Zervas, Lebow and Myles,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

EquipKeyCo, LLC ("Applicant") seeks to register the mark



on the Principal Register for "pre-fabricated metal ignition keys for starting heavy equipment, namely construction and agricultural equipment" in International Class 6.[1]

The Examining Attorney issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding Applicant's mark is likely to cause confusion with the mark



of Registration No. 3093826 for "metal, brass and aluminum key blanks; metal and aluminum key chains; metal and brass locks, lock cylinders, pad locks and door locks" in International Class 6.[2] "The representation of a key" has been disclaimed, and color is not claimed as a feature of the mark.

The Examining Attorney also refused registration of Applicant's mark in the absence of a disclaimer of the wording "EQUIP KEY CO." *See* Trademark Act Sections

[1] Application Serial No. 97344289 was filed on April 3, 2022, under Section 1051(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use and first use in commerce on November 15, 2019. The mark is described as consisting of "a black and white stylized American flag waving above the words 'EQUIPKEYCO' where 'EQUIP' is in black, 'KEY' is in orange outlined in black, and 'CO' is in yellow outlined in black. The letter 'Q' in the mark forms a key in black. The remaining white areas in the drawing represent the transparent areas in the mark." The colors yellow, orange, white and black are claimed as features of the mark.

[2] Registered on May 16, 2006, renewed.

2(e)(1) and 6(a), 15 U.S.C. §§1052(e)(1), 1056(a). The Examining Attorney (i) found that the wording in Applicant's mark merely describes a feature of Applicant's goods because Applicant is a company that sells keys used for starting construction and agricultural equipment; and (ii) required that "[t]he wording 'EQUIPKEYCO' must appear in its correct spelling, i.e., 'EQUIP KEY CO' in the disclaimer."

After a final Office Action issued, Applicant filed an appeal, and Applicant and the Examining Attorney filed briefs. For the reasons set forth below, we affirm the disclaimer requirement and reverse the likelihood of confusion refusal.

I. Disclaimer

Under Section 6(a) of the Trademark Act, "[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Merely descriptive terms are unregistrable under Section 2(e)(1) of the Trademark Act, and therefore are subject to a disclaimer requirement if the mark is otherwise registrable. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1041 (Fed. Cir. 2005).[3] Failure to comply with a disclaimer requirement is a basis for refusing registration of the entire mark. *See In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1137 (Fed. Cir. 2015); *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1933 (TTAB 2012).

[3] As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, citations in this opinion are in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the TTAB issued after 2018, this opinion cites to the Lexis legal database. Other TTAB decisions cite to the United States Patent Quarterly reporter.

A term is "merely descriptive" within the meaning of Section 2(e)(1) "if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017) (citing *In re Bayer AG*, 488 F.3d 960, 963 (Fed. Cir. 2007)). A term "need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods." *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 1218 (Fed. Cir. 1987)).

Whether a term is merely descriptive is evaluated "in relation to the particular goods [or services] for which registration is sought, the context in which the mark is used, and the possible significance the term would have to the average consumer because of the manner of its use or intended use," *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (quoting *Bayer* 488 F.3d at 963), and "not in the abstract or on the basis of guesswork." *Fat Boys Water Sports*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978)). "In other words, we evaluate whether someone who knows what the goods are will understand the mark to convey information about them." *Id.* at 1515 (citing *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1253 (Fed. Cir. 2012)). Evidence that a term is merely descriptive to the relevant purchasing public "may be obtained from any competent source, such as dictionaries," *Bayer*, 488 F.3d at 964, advertising material directed to the goods, *Abcor Dev.*, 588 F.2d at 814, websites, publications,

and an applicant's own specimen of use and any explanatory text included therein. *N.C. Lottery*, 866 F3d at 1368; *In re Nett Designs Inc.*, 236 F.3d 1339, 1340 (Fed. Cir. 2001).

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173 (Fed. Cir. 2004). However, a mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. *See In re Colonial Stores Inc.*, 394 F.2d 549, 552 (CCPA 1968); *In re Shutts*, 217 USPQ 363 (TTAB 1983).

The Examining Attorney requires a disclaimer of EQUIP KEY CO, relying on:

> • Merriam Webster Dictionary – "equip" is an abbreviation for "equipment" (February 8, 2023 Office Action, 19 TSDR).[4]
>
> • Collins Dictionary (American English) – "equip" is an abbreviation for "equipment" (May 2, 2024 Office Action, 84 TSDR).

[4] Page references 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 version of the documents in the USPTO TSDR Case Viewer. Citations to briefs refer to TTABVUE, the Board's online docketing system.

• Acronym Finder – "EQUIP stands for Equipment" (May 2, 2024 Office Action, 77 TSDR).

• Merriam Webster Dictionary – "equipment" defined as "the implements used in an operation or activity" (February 8, 2023 Office Action, 61 TSDR).

• The American Heritage Dictionary – "equipment" defined as "something with which a person, organization, or thing is equipped" (May 2, 2024 Office Action, 110 TSDR).

• Merriam Webster Dictionary – "key" defined as "a usually metal instrument by which the bolt of a lock is turned" (February 8, 2023 Office Action, 68 TSDR).

• The American Heritage Dictionary – "key" defined as "a notched and grooved, usually metal implement that is turned to open or close a lock" (May 2, 2024 Office Action, 112 TSDR).

• Collins Dictionary (American English) – "key" defined as "a specially shaped piece of metal that you place in a lock and turn in order to open or lock a door, or to start or stop the engine of a vehicle" (*Id*., 90 TSDR).

• Merriam Webster Dictionary – "CO" is an abbreviation for "company" (*Id*., 67 TSDR).

In addition,

• The ekeyblanks.com webpage refers to "Equipment keys" (February 8, 2023 Office Action, 26 TSDR).

• Lockmastersusa.com refers to "equipment keys" as a category of goods (May 2, 2024 Office Action, 7 TSDR).

• Shop.imiss.com refers to an "Equipment Key Set." *Id*., 14 TSDR).

• Lostakey.net refers to "Heavy Equipment Keys" (*Id*., 29 TSDR).

• Easykeys.com refers to "Heavy Equipment Keys (*Id*., 45 TSDR).

The three terms in Applicant's mark, EQUIP, KEY and CO are immediately recognizable as distinct terms because they are displayed with initial capital letters and in different colors. The first term contains an image of a key for the letter "q," which a consumer would associate with the letter "q" because of the key's visual similarity to that letter and position in the term "equip." The remaining letters are in a simple, ordinary font. In addition:

> • "Equip" is a recognized abbreviation for the word "equipment."[5] Applicant acknowledges the same, stating, EQUIP "may also be used as an abbreviation for equipment.[6]
>
> • "Equipment" means "the implements used in an operation or activity,"[7] referring to the items for which the keys are used.
>
> • "Key" refers to the goods listed in Applicant's identification of goods.
>
> • "Co" is a recognized abbreviation for "company" and indicates a business type or structure, without source-indicating capacity. *See In re Wm. B. Coleman Co., Inc.*, 93 USPQ2d 2019, 2025 (TTAB 2010) ("the term 'company' is simply a designation for a type of entity without source-identifying capability.").
>
> • "Equipment key" appears to be a recognized term for a class of keys. *See* Internet usage, *supra*.

The wording, hence, merely describes a feature of Applicant's goods, that the goods are equipment keys sourced from an equipment key company. The composite EQUIP

[5] "Equip" is also a verb. In the context of Applicant's goods and the other terms in the mark, more naturally, "equip" would be perceived as an abbreviation for "equipment." Descriptiveness is considered in relation to the relevant goods and/or services. *DuoProSS Meditech*, 695 F.3d at 1254.

[6] Applicant's brief, 4 TTABVUE 8.

[7] February 8, 2023 Office Action, 61 TSDR.

KEY CO does not create a unitary mark with a nondescriptive meaning, or have a bizarre or incongruous meaning as applied to the goods.

The abbreviations for "equipment" and "company" do not make the proposed mark non-descriptive. The dictionary definitions and third-party uses show that "equipment" is a known abbreviation for "equip," and "co" is a known abbreviation for "company." This type of evidence often supports a finding that an abbreviation is itself merely descriptive. *In re Well Living Lab Inc.*, 122 USPQ2d 1777, 1779 (TTAB 2017), *aff'd,* 749 Fed. Appx. 987 (Fed. Cir. 2018) (finding, based on dictionary definitions and usage examples, that LAB is an abbreviation of "laboratory," and that WELL LIVING LAB is merely descriptive of research, testing and development in the field of wellness); *In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1715 (TTAB 2011) ("A word, term, or letters that are a recognized abbreviation for the goods in the application is merely descriptive.").

Applicant argues that "EQUIP" used as an abbreviation is suggestive because "equipment is a broad term that encompasses many types of machinery [such as] … aftermarket automotive parts or custom covers" and "heavy equipment including construction and agricultural equipment."[8] As the Examining Attorney points out, the determination of whether a mark is merely descriptive is made in relation to an applicant's goods, not in the abstract. *DuoProSS Meditech*, 695 F.3d at 1254; *Chamber of Commerce of the U.S.*, 675 F.3d at 1300. EQUIP is followed directly by

[8] Applicant's brief, 4 TTABVUE 8.

the term KEY, and that "equipment key" appears in the evidence as a class of key.[9] Thus, it cannot be a suggestive term.

Applicant also argues:

> Applicant's Mark includes design elements (e.g., flag and letter Q in the form of a key). Such design elements mitigate the examining attorney's position that Applicant's Mark is merely descriptive. In this instance the flag design element has no specific association with the goods in question.[10]

The refusal, however, is not that the entire mark is merely descriptive – the refusal is that the wording in the mark must be disclaimed. The inclusion of the flag and key design are therefore not relevant to the disclaimer requirement.

In view of the foregoing, the refusal to register Applicant's mark based on the requirement for a disclaimer of EQUIP KEY CO is affirmed.[11] Trademark Act Section 6(a).

Although Applicant's failure to comply with the disclaimer requirement is a sufficient basis for refusing registration of Applicant's mark and deeming moot the refusal of registration under Trademark Act Section 2(d), *see In re DTI P'ship, LLP*, 67 USPQ2d 1699, 1701-02 (TTAB 2003), for the sake of completeness and efficiency, and in view of our holding below that the refusal will be set aside if Applicant submits a proper disclaimer, we exercise our discretion to determine the merits of the Section 2(d) refusal.

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[9] *See*, *e.g.*, particularly May 2, 2024 Office Action, 9 TSDR.

[10] Applicant's brief, 4 TTABVUE 9.

[11] Applicant states that any doubt regarding the mark's descriptiveness should be resolved on Applicant's behalf. We have no doubts as to our conclusion.

II. Likelihood of Confusion

Our determination under Section 2(d) of the Trademark Act involves an analysis of all of the probative evidence of record that is relevant to the factors bearing on a likelihood of confusion. *See In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005).

We must consider "each *DuPont* factor for which there is evidence and argument." *Spireon, Inc. v. Flex LTD*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *In re Guild Mortg. Co.*, 912 F.3d 1376, 1380 (Fed. Cir. 2019)). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) ("likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but 'may focus … on dispositive factors, such as similarity of the marks and relatedness of the goods'") (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). "Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances." *Stratus Networks, Inc. v. UBTA-UBET Commc'ns, Inc.*, 955 F.3d 994, 999 (Fed. Cir. 2020) (citing *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997)).

A. Similarity of Goods

We first consider the "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 476 F.2d at 1361. In determining the similarity of the goods, we look to the goods as identified in the

application and the registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990) ("The authority is legion that 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 regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.")); *see also In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

The compared goods need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000). 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] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

As mentioned, Applicant's goods are "pre-fabricated metal ignition keys for starting heavy equipment, namely construction and agricultural equipment" and Registrant's goods are "metal, brass and aluminum key blanks; metal and aluminum key chains; metal and brass locks, lock cylinders, pad locks and door locks."

The Internet evidence consisting of webpages from the following sources establishes that the same entity commonly provides the prefabricated metal ignition keys and key blanks under the same mark:

- wahlinparts.com[12]
- lockmastersusa.com[13]
- imlss.com[14]
- lostakey.net[15]
- cubiclekeys.com[16]
- easykeys.com[17]
- heavyequipmentkeys.com[18]
- mrlock.com[19]

In addition, the application specimen of use states, "32 of our most popular heavy construction equipment keys on 1 ring …. These are not basic machine key copies. They are designed and manufactured to meet or exceed the quality of most other keys used on heavy construction equipment." Applicant's identified goods are related to key rings – or key chains – because they are used together, with the ring holding the keys.[20]

Applicant argues that the goods are different because key blanks need to be formed into keys, and that the cited registration "fails to mention vehicles and more

[12] February 8, 2023, pp. 37-42.

[13] May 2, 2024, pp. 7-13.

[14] *Id.* at pp. 14-19.

[15] *Id.* at pp. 20-36.

[16] *Id.* at pp. 37-44.

[17] *Id.* at pp. 45-60.

[18] *Id.* at pp. 61-66.

[19] *Id.* at pp. 74-76.

[20] *See* Merriam Webster Online Dictionary definition of "key chain" - "a device that is used to hold keys and that usually consists of a metal ring, a short chain, and sometimes a small decoration." (https://www.merriam-webster.com/dictionary/key%20chain, accessed on June 3, 2025. We take judicial notice of this definition. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

particularly heavy equipment including construction and agricultural equipment."[21] The argument is not persuasive because "[t]he issue, of course, is not whether purchasers would confuse the goods or services, but rather whether there is a likelihood of confusion as to the source thereof." *Orange Bang, Inc. v. Olé; Mexican Foods, Inc.*, 116 USPQ2d 1102, 1117 (TTAB 2015); *Bd. of Regents, Univ. of Tex. Sys. v. S. Ill. Miners, LLC*, 110 USPQ2d 1182, 1189 (TTAB 2014). And, as the evidence indicates, other entities commonly provide key blanks and pre-fabricated ignition keys for heavy equipment under a single mark and in the same channels of trade.

In view of the foregoing, we find the *DuPont* factor regarding the similarity of the goods favors finding a likelihood of confusion.

B. Similarity of Trade Channels, and the Conditions Under Which, and Buyers to Whom, Sales are Made – Impulse vs. Careful, Sophisticated Purchasing

With regard to the *DuPont* factor regarding "the similarity or dissimilarity of established, likely-to-continue trade channels," Applicant's ignition keys are limited to heavy equipment, namely, construction and agricultural equipment, and Registrant's identified goods contain no channel of trade or class of purchaser limitation.

The Examining Attorney's evidence includes screenshots showing the following on the same webpage:

- Lostakey.net - Offering key blanks and a key for a "JCB 3cx backhoe."[22]

[21] Applicant's brief, 4 TTABVUE 7.

[22] May 2, 2024 Office Action, 32 TSDR.

- Cubiclekeys.com – offering key blanks and Caterpillar heavy equipment keys.[23]
- Heavyequipmentkeys.com – offering a Komatsu key blank and a Komatsu 7897 Ignition key.[24]

In light of the evidence described above, we find that the Internet is a trade channels for such goods and the *DuPont* factor involving trade channels favors a finding of likelihood of confusion.

With regard to conditions under which, and buyers to whom, sales are made – impulse vs. careful, sophisticated purchasing, Applicant identifies its intended consumers as "contractors, farmers, and other groups and entities operating and/or owning heavy equipment including construction and agriculture equipment."[25] Applicant adds that its purchasers are sophisticated because the equipment for which the goods will be used are large and expensive,[26] but that Registrant's consumers are key makers who duplicate keys for end users, and those wanting key chains, locks, lock cylinders, pad locks and door locks, and not those looking for pre-fabricated ignition keys able to start heavy equipment.[27]

The Examining Attorney does not identify the purchasers of Applicant's and Registrant's goods, but mentions that because purchasers are sophisticated or

[23] May 2, 2024 Office Action, 37 TSDR.

[24] May 2, 2024 Office Action, 61 TSDR.

[25] Applicant's brief, 4 TTABVUE 7.

[26] *Id*. at 7. This argument is not persuasive because Applicant's goods do not include heavy equipment.

[27] *Id*.

knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion.[28]

Registrant's goods are not limited to key blanks. They include metal and aluminum key chains. Those purchasing "pre-fabricated metal ignition keys for starting heavy equipment, namely construction and agricultural equipment" would likely also purchase a metal key chain, because the key chain is a place to keep a collection of keys. In fact, Applicant's specimen depicts 32 keys on a key ring, and states, "Carabiner Included." We find that purchasers of Applicant's and Registrant's identified goods overlap.

As to purchaser care and sophistication, the record reveals that a key blank can be purchased for as little as $1.02[29] and machine keys can be purchased for $5.07.[30] Without evidence, we cannot find that those who operate or own heavy equipment are sophisticated, or take anything but ordinary care, in purchasing low-cost goods.[31] Also, Applicant makes no argument that purchasers of key chains - goods within Respondent's identification of goods - are sophisticated. We therefore find that the *DuPont* factor regarding purchaser care and sophistication is neutral in the likelihood of confusion analysis.

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[28] Examining Attorney's brief. 6 TTABVUE 8.

[29] May 2, 2024 Office Action, 60 TSDR.

[30] May 2, 2024 Office Action, 53 TSDR.

[31] "Attorney argument is no substitute for evidence." *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005).

C. Similarity of the Marks

The *DuPont* factor regarding the similarity or dissimilarity of the marks requires a consideration of the marks in terms of appearance, sound, connotation, and overall commercial impression. *Palm Bay Imps.*, 396 F.3d at 1371. The test under this *DuPont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.,* 668 F.3d at 1368.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1008 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). Further, "[n]o 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) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 1295 (CCPA 1974)). Nonetheless, 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. *Stone Lion*, 746 F.3d at 1322.

With the foregoing in mind, we examine Applicant's 

mark and Registrant's 

mark, beginning with the wording in the marks.

Where, as here, an applicant's mark comprises both a word and a design, the general framework for analyzing such marks is that the literal portion is accorded greater weight because purchasers will use the words to request or refer to the goods. *See CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983) (generally, the literal portions of a word and design mark are the dominant and most significant features of marks because consumers will call for the goods or services in the marketplace by that portion); *Dixie Rests.,* 105 F.3d at 1407 (dominant portion of THE DELTA CAFE and design mark is DELTA as the generic term CAFE has been disclaimed). The Court of Appeals for the Federal Circuit has cautioned, however, that "[t]here is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue." *In re Electrolyte Labs. Inc.*, 913 F.2d 930, 932 (Fed. Cir. 1990).

The dictionary definitions in the record for the terms "key" and "co" guide us in determining the strength (or weakness) of the cited mark's wording as a source

indicator. Dictionary definitions can be used to show conceptual weakness.[32] *See Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1035 (Fed. Cir. 2021); *Made in Nature, LLC v. Pharmavite LLC*, 2022 TTAB LEXIS 228, at *26 (2022) (considering dictionary definitions and third-party registrations as evidence of the suggestiveness of MADE IN NATURE). "[A] term found in the dictionary and one that has a well[-]known meaning to the average person ... might suggest that it is a 'weak' mark when used in its literal or related meanings." *Indus. Valley Bank & Trust Co. v. Bankers Trust of S.C., N.A.*, 201 USPQ 888, 893 (TTAB 1979). As stated above, "key" is defined as "a usually metal instrument by which the bolt of a lock is turned [33] and "co" is an abbreviation for "company."[34]

Based on these definitions, and within the context of considering Registrant's mark in connection with its identified keys and key-related goods, we find that consumers of Registrant's goods would immediately understand the term KEYCO is a combination of the terms KEY and CO, meaning "key company." Their understanding is reinforced by Registrant's design of keys on a key ring. KEYCO therefore has conceptual weakness, and is not a particularly distinctive term for

[32] Commercial strength can also be considered in determining the overall strength of a mark. In an ex parte appeal such as this one, the owner of the cited registration is not a party, and the Examining Attorney was under no obligation to demonstrate consumers' exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 120 USPQ2d 1504, 1512 (TTAB 2016). The mark's commercial strength, as usual in an ex parte appeal, is therefore treated as neutral. *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1086 (TTAB 2016).

[33] February 8, 2023 Office Action, 68 TSDR.

[34] May 2, 2024 Office Action, 67 TSDR.

Registrant's goods.[35] It must, however, be presumed inherently distinctive – it lies within a Principal Register registration that has no claim of acquired distinctiveness, and KEYCO has not been disclaimed. *See Monster Energy Co. v. Chun Hua Lo*, 2023 TTAB LEXIS 14, at *26 (2023), citing *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 TTAB LEXIS 199, at *29 (2020) ("Opposer's mark is inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act."). Thus, we find the wording in Registrant's mark to be distinctive, but highly suggestive of Registrant's identified goods, and an extremely weak source indicator.

If matter shared by two marks is highly suggestive, merely descriptive, or commonly used or registered in the industry for similar goods or services, an addition of a term or terms or other matter to another's mark may avoid confusion. *See In re Bed & Breakfast Registry*, 791 F.2d 157, 159 (Fed. Cir. 1986) ("The record shows that a large number of marks embodying the words 'bed and breakfast' are used for similar reservation services, a factor that weighs in favor of the conclusion that BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL are not rendered confusingly similar merely because they share the words 'bed and breakfast.'"); *In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1154 (TTAB 2011) (numerous third-party uses of GRAND HOTEL marks for hotel services show that

[35] In this regard, we note the Supreme Court's decision in *Goodyear's Rubber Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 603 (1888), which states that adding terms such as "Corp.", "Inc.", and "Co." to a generic term does not add any trademark significance to an otherwise unregistrable mark.

consumers distinguish between these marks even though the only distinguishing element is a geographically descriptive term; "GRAND HOTEL is highly suggestive, and therefore the scope of protection to which the cited registration is entitled is quite limited.").

Looking at the marks in their entireties, the design portions are very different overall. The literal portions are different as well due to the addition of the term EQUIP. Given the conceptual weakness of the element "KEYCO," we find that consumers will look to other aspects of these marks to distinguish source, and that the addition of EQUIP and the design elements of Applicant's mark are sufficient to distinguish it from the cited mark.

The *DuPont* factor regarding the similarity of the marks weighs against a finding of likelihood of confusion.

D. Conclusion

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. *See In re Charger Ventures LLC*, 65 F.4th 1375, 1384 (Fed. Cir. 2023). Although we find the goods similar, and the trade channels and classes of consumers overlap, and the goods can be low-cost items bought with little care, in view of the narrow scope of protection afforded the term KEYCO in the cited mark, the common element of the two marks, we find confusion is unlikely. The first *DuPont* factor, in this case, is the dispositive factor and outweighs the other factors. *See Kellogg Co. v. Pack-Em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) ("[W]e know of no reason why, in a particular case, a single *du Pont* factor may not be

dispositive."). We therefore conclude that Applicant's mark for "pre-fabricated metal ignition keys for starting heavy equipment, namely construction and agricultural equipment" is **not** likely to be confused with Registrant's mark for "metal, brass and aluminum key blanks; metal and aluminum key chains; metal and brass locks, lock cylinders, pad locks and door locks."

Decision:

1. The requirement for a disclaimer of "EQUIP KEY CO" is affirmed. If Applicant submits the required disclaimer of EQUIP KEY CO to the TTAB within **thirty days**, this decision will be set aside. *See* Trademark Rule 2.142(g), 37 C.F.R. § 2.142.[36]
2. The refusal to register Applicant's mark for its International Class 31 goods under Section 2(d) is reversed.

[36] A properly worded disclaimer reads: "No claim is made to the exclusive right to use EQUIP KEY CO apart from the mark as shown." *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1213.08(a)(i) (May 2025).