

This Opinion is Not a  
Precedent of the TTAB

Mailed: January 25, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Hope for Children Foundation*

*v.*

*Samsung Electronics Co., Ltd.*  
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Cancellation No. 92058111  
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John M. Cone of Ferguson, Braswell & Fraser, PC  
for Hope for Children Foundation.

Diane J. Mason of LeClairRyan LLP  
for Samsung Electronics Co., Ltd.  
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Before Zervas, Taylor and Kuczma,  
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On April 24, 2014, Registration No. 4132441 (“the ‘441 registration”) for the mark



issued on the Principal Register to Samsung

Electronics Co., Ltd. (“Respondent”) for the following services:

“On-line retail store services featuring televisions, audio and video products, computers and computer related products, namely, printers, monitors, and hard disk drives, telephones, fax machines, and home appliances, namely, microwave ovens” in International Class 35, and

“Charitable fund raising services, namely, raising funds for children related causes through sports events” in International Class 36.

The ‘441 registration is based on an application filed under Section 1(b), 15 U.S.C. § 1051(b), on May 12, 2010, and identifies the dates of first use and first use in commerce as January 15, 2010 for both the International Class 35 and 36 services. The translation statement in the registration states “Samsung” is translated in English as “three stars”; and the description of the mark statement in the registration identifies Respondent’s mark as consisting of the “the stylized word ‘Samsung’ above the stylized wording ‘Hope For Children,’ all in the color black, and a red circular shape containing a heart in white, a purple circular shape containing two hand designs in white, and a green circular shape containing a tree in white, all to the right of the word ‘Samsung’ and over the wording ‘Hope For Children.’” Respondent disclaimed FOR CHILDREN for the International Class 36 services.

Hope for Children Foundation (“Petitioner”) filed an amended petition to cancel the ‘441 registration, alleging priority of use of HOPE FOR CHILDREN FOUNDATION and likelihood of confusion pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). None of the specific allegations in the petition to cancel or the amended petition to cancel identify the services for which Petitioner claims to

have priority, but the ESTTA cover sheet<sup>1</sup> accompanying the petition to cancel identifies the HOPE FOR CHILDREN FOUNDATION mark for “educational and entertainment services, namely, providing in person and/or online video streaming training and education to first responders and the general public to better protect children and adult victims from violent crimes of sexual assault and domestic violence” “as a Basis for Cancellation.”<sup>2</sup>

Respondent filed an answer to the amended petition to cancel in which it denied Petitioner’s salient allegations and asserted certain affirmative defenses, which are instead amplifications of its denials. The parties have fully briefed the case.

*Preliminary Issue*

Our first task is to identify those services asserted by Petitioner. A claim may not be heard unless it has been pleaded or, if unpleaded, has been tried by the consent of the parties. Fed. R. Civ. P. 15(b)(2). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) §§ 314 and 507.03(b) (Jan. 2017). As noted, Petitioner did not identify its services in the allegations set forth in its petition to

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<sup>1</sup> The content of the ESTTA cover sheet is read in conjunction with the notice of opposition as an integral component. *PPG Industries Inc. v. Guardian Industries Corp.*, 73 USPQ2d 1926, 1928 (TTAB 2005). *See also Embarcadero Techs., Inc. v. Delphix Corp.*, 117 USPQ2d 1518, 1523 (TTAB 2016), referring to “ESTTA cover sheet.”

<sup>2</sup> 1 TTABVUE. Citations to specific pages in the record in this opinion are to the TTABVUE docket entry number and the electronic page number where the document or testimony appears. Because the Board primarily uses TTABVUE in reviewing evidence, the Board prefers that citations to material or testimony in the record that has not been designated confidential include the TTABVUE docket entry number and the TTABVUE page number. For material or testimony that has been designated confidential and which does not appear on TTABVUE, the TTABVUE docket entry number where such material or testimony is located should be included in any citation. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

cancel or amended petition to cancel, but identified certain services in the ESTTA cover sheet accompanying the original petition for cancellation. In its brief, Petitioner maintains that its services also include “raising funds for children related causes,”<sup>3</sup> services which were not identified in the ESTTA cover sheet.

Based on the services identified in the ESTTA cover sheet, as well as the testimony and evidence submitted, and the fact that Respondent addressed Petitioner’s arguments regarding “raising funds for children related causes” without objection, we find this issue was tried by the consent of the parties, and consider the pleadings to be amended with regard thereto. Thus, we consider the parties to have tried the issue of priority and likelihood of confusion based on Petitioner’s assertion of rights in its mark in connection with “educational and entertainment services, namely, providing in person and/or online video streaming training and education to first responders and the general public to better protect children and adult victims from violent crimes of sexual assault and domestic violence” and “raising funds for children related causes.”

*Evidentiary Issue*

Petitioner filed a motion (on July 12, 2016) to strike various documents submitted into the trial record by Respondent on the ground that they contain hearsay and are being used to prove the truth of the matters asserted in the documents, or are not business records. None of the exhibits sought to be excluded is outcome determinative. Given this fact, coupled with the number of objections, we see no

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<sup>3</sup> Petitioner’s brief at 2, 56 TTABVUE 6.

compelling reason to discuss the objections in a detailed fashion. Suffice it to say, we have considered all of the exhibits submitted by Respondent. In doing so, we have kept in mind the various objections raised by Petitioner, and we have accorded whatever probative value the subject testimony and exhibits merit. Petitioner's motion to strike is denied.<sup>4</sup>

*The Evidentiary Record*

Petitioner submitted the following:

- The testimony depositions of (i) Jaye D. Crowder, President of Petitioner, taken March 12, 2015, (ii) Lisa Spikes, an employee of Petitioner, taken March 12, 2015, and (iii) Patricia Kirby, executive director of Petitioner, taken March 12, 2015, and exhibits thereto;
- First Notice of Reliance submitting the file history of Petitioner's application Serial No. 85673965 for the mark HOPE FOR CHILDREN FOUNDATION, including the USPTO's refusal based on the '441 registration;
- Second Notice of Reliance submitting financial records for Petitioner's bank account at United Texas Bank, supported by the affidavit of Suzanne Salls, United Texas Bank's custodian of record;<sup>5</sup>
- Third Notice of Reliance submitting archived records of Petitioner's website for September 24, 2004 and May 10, 2008, obtained from the Internet Archive/Wayback

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<sup>4</sup> As to the hearsay objections, we note that the Board does not generally strike properly taken and filed testimony or exhibits based on substantive objections such as hearsay. Rather, such objections are taken into consideration in determining the probative value of the evidence. *See Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1326 (TTAB 1992). Further, Petitioner is advised that documents may be considered for "what they show on their face," not for the truth of the statements contained therein. TBMP § 704.

<sup>5</sup> The record does not include a stipulation providing for the submission of testimony by affidavit or declaration for Ms. Salls and Mr. Butler. *See* Trademark Rule 2.123(a), 37 C.F.R. § 2.123(a) (2007). Because Respondent did not object to the affidavit and declaration, and stipulated to Ms. Kirby's rebuttal declaration (discussed *infra*), we have considered Ms. Salls' and Mr. Butler's testimony.

Machine and the declaration<sup>6</sup> of Christopher Butler, custodian of records of the Internet Archive/Wayback Machine; and

- Rebuttal declaration of Ms. Kirby, pursuant to the parties' stipulation to take testimony by declaration.<sup>7</sup>

Respondent submitted the following:

- First Notice of Reliance with incomplete exhibits and Corrected First Notice of Reliance with corrected exhibits, submitted on the same date, consisting of Forbes' 2015 ranking of world's most valuable brands, Brand Finance 2015 Most Valuable Global Brands and Interbrand's 2014 ranking of the world's top 100 brands;
- Second Notice of Reliance submitting Exh. Nos. 4 - 24 consisting of online articles;
- Third Notice of Reliance submitting Exh. Nos. 25 - 33 consisting of material published in various magazines;
- Fourth Notice of Reliance submitting Exh. Nos. 34 - 54 consisting of printouts from web sites;
- Affidavit of Austin Phillips and exhibits,<sup>8</sup> submitted pursuant to the parties' stipulation (dated December 28, 2015)<sup>9</sup> to take testimony by affidavit; and
- Testimony deposition of David Steel, Respondent's Executive Vice President of Global Communications, and exhibits.

### *Standing*

A threshold issue in every *inter partes* case is the plaintiff's standing to challenge registration. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111

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<sup>6</sup> Although titled as an affidavit, the submission is in declaration form.

<sup>7</sup> 50 TTABVUE 4 - 5.

<sup>8</sup> 43 TTABVUE.

<sup>9</sup> 42 TTABVUE.

USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). The plaintiff must show that it possesses a real interest in the proceeding beyond that of a mere intermeddler, and that it has a reasonable basis for its belief of damage resulting from registration of the subject mark. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

A cancellation petitioner may establish its standing by proving that its pending application for registration has been refused on the basis of the involved registration. *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). Because Petitioner submitted a copy of an Office Action in which the Examining Attorney refused registration of Petitioner's pleaded mark HOPE FOR CHILDREN FOUNDATION (Application Serial No. 85758465), under Trademark Act Section 2(d), 15 U.S.C. § 1052(d),<sup>10</sup> in view of the '441 registration, Petitioner has established that it has a stake in the outcome of this proceeding, and hence has established its standing.

#### *Priority*

In order for Petitioner to establish priority and ultimately prevail in this proceeding, it must demonstrate that it used its pleaded mark HOPE FOR CHILDREN FOUNDATION in commerce prior to Respondent's priority date. *See* Trademark Act Section 2, 15 U.S.C. §1052 (to establish priority on a likelihood of confusion claim brought under Trademark Act § 2(d), a party must prove that, vis-a-

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<sup>10</sup> 18 TTABVUE 18 – 26.

vis the other party, it owns “a mark or trade name previously used in the United States ... and not abandoned ...”). “Oral testimony, if sufficiently probative, is normally satisfactory to establish priority of use.” *Powermatics, Inc. v. Globe Roofing Products Co.*, 341 F.2d 127, 144 USPQ 430, 432 (CCPA 1965). “In this regard, oral testimony should be clear, consistent, convincing, and uncontradicted.” *Productos Lacteos Tocumbo S.A. de C.V. v. Paeteria La Michoacana, Inc.* 98 USPQ2d 1921, 192 (TTAB 2011).

It is well settled that in the absence of any evidence of earlier use, the earliest date upon which a respondent may rely is the filing date of the underlying application that matured into the subject registration. *See* Trademark Act Section 7(c), 15 U.S.C. §1057(c). *See also Larami Corp. v. Talk to Me Programs, Inc.*, 36 USPQ2d 1840 (TTAB 1995). The USPTO accorded a filing date of May 12, 2010 to the application that matured into the registration at issue herein. Mr. Steel, Respondent’s Executive Vice President of Global Communications, testified that Respondent first used SAMSUNG HOPE FOR CHILDREN also in 2010.<sup>11</sup> We therefore consider Petitioner’s arguments regarding its first use of its mark for “educational and entertainment services, namely, providing in person and/or online video streaming training and education to first responders and the general public to better protect children and adult victims from violent crimes of sexual assault and domestic violence.”

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<sup>11</sup> Steel Depo. at 12, 45 TTABVUE at 16.

Ms. Kirby testified that Petitioner, incorporated on April 2, 1998,<sup>12</sup> first used HOPE FOR CHILDREN FOUNDATION “when we were incorporated” for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them [and] ... rais[ing] funds to pay for these activities and services”; and that Petitioner has not “ever” ceased providing such services since 1998.<sup>13</sup> Petitioner provides its services to law enforcement personnel, attorneys, and those who serve abused or potentially abused women or children.<sup>14</sup> Further, Petitioner conducts child abuse prevention events in front of stores or movie theaters or at malls.<sup>15</sup> In addition, Petitioner has maintained a website since 2000 which displays its mark.<sup>16</sup>

Because Petitioner has established a first use date for its training services prior to Respondent’s priority date, and Respondent has not contested Petitioner’s priority for such services, Petitioner has established priority of use of HOPE FOR CHILDREN FOUNDATION for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them.”

With regard to Petitioner’s assertion of prior rights in connection with “raising funds for children related causes,” Petitioner established that the “rais[ing] funds to

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<sup>12</sup> See Petitioner’s certificate of incorporation. Kirby Depo. Exh. 3, 23 TTABVUE 103.

<sup>13</sup> Kirby Depo. at 9-10, 23 TTABVUE 13-14.

<sup>14</sup> Crowder Depo. at 7: 21 TTABVUE 11.

<sup>15</sup> Spikes Depo. at 6, 22 TTABVUE 10.

<sup>16</sup> Kirby Depo. at 32 – 34, 23 TTABVUE 36 - 38.

pay for these activities and services” referred to by Ms. Kirby in her testimony includes conducting walkathons in 2003 – 2005, and 2006.<sup>17</sup> Ms. Kirby testified:

Q. Did the foundation hold a similar walk in any other years?

A. ... we had walks for four years. Unfortunately my husband passed away and I'm the driving force of the organization and we have not been doing the walks but we will probably have -- we'll probably start this up mostly like this next spring and continue it because we now have other people in place that will be conducting that and organizing it other than just myself.

In addition, Petitioner’s webpage apparently from September 24, 2004 includes a link with the caption “Please remember Hope For Children in your will,”<sup>18</sup> and Ms. Kirby testified that Petitioner “received donations online through PayPal.”<sup>19</sup>

Respondent disputes Petitioner’s priority for such services by arguing only that Petitioner does not have a service that is recognizable; that it is raising funds for its own benefit and not for the benefit of others; and a service must be performed for the benefit of a third-party.<sup>20</sup> Because Petitioner is providing services to others enabled

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<sup>17</sup> Kirby Depo. at 24 – 25, 23 TTABVUE 28; Exh. 16 to Kirby Depo., 23 TTABVUE 144.

<sup>18</sup> Kirby Depo. Exh. 24, 24 TTABVUE 101, from the Internet Archive Wayback Machine. *See also* Ms. Kirby’s testimony at pp. 37 - 38, 23 TTABVUE 41 - 42, stating that a link on Petitioner’s website “takes you to a page where if somebody wants to donate to our organization they can donate through PayPal.”

<sup>19</sup> Kirby Depo. at 72, 23 TTABVUE 76.

<sup>20</sup> Respondent’s brief at 20 - 21, TTABVUE 25 - 26. Respondent has not pleaded or argued that Petitioner has abandoned its mark for raising funds for children related causes through walkathons. Petitioner therefore need not demonstrate continuous use of its pleaded mark in connection with walkathons in order to prevail on the issue of priority. In *West Florida Seafood Inc. v. Jet Restaurant, Inc.*, 31 USPQ2d 1660, 1665 (Fed. Cir. 1994), the Federal Circuit, in reversing the Board, held that a plaintiff in a Board proceeding need not show continuous use unless the defendant is asserting the affirmative defense of abandonment.

by its fundraising, we find that it has established that it has raised funds for children related causes, as a recognizable service. *See American Lebanese Syrian Assoc. Charities, Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1027 (TTAB 2011) (“The qualifying term ‘charitable services’ is broad, and it encompasses both charitable fundraising to support research and the distribution of collected funds to support research.”). We find, therefore that Petitioner has established use of HOPE FOR CHILDREN FOUNDATION in connection with fundraising for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them” including walkathons, prior to any first use date that Respondent may claim and, accordingly, has established priority for such services.

#### *Likelihood of Confusion*

Our likelihood of confusion determination under Section 2(d) is a legal conclusion, based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1946

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The Court, in reaching its conclusion, highlighted the following language from the Trademark Act:

The governing statute does not speak of “continuous use,” but rather of whether the mark or trade name has been “previously used in the United States by another and not abandoned.” 15 U.S.C. Section 1052(d).

Moreover, we note that Ms. Kirby testified that in addition to other forms of fundraising, Petitioner has an intent to resume use of its mark in connection with the raising of funds through walkathons.

(Fed. Cir. 2006); *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. See *Federated Foods, Inc. v. Fort Howard Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (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.”).

#### *Similarity of the Marks*

We first turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. “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.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). See also *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Typically we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 at 567. However, a “finding of similarity as to any one factor (sight, sound or meaning) alone ‘may be sufficient to support a holding that the marks are confusingly similar.’” *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (citations omitted). *See also In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987).

Respondent’s mark includes a design element. Where a mark consists of words as well as a design, the words are generally dominant because the words will be used to call for or refer to the services. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Dakin’s Miniatures Inc.*, 59 UPSQ2d 1593, 1596 (TTAB 2001); *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Although we have compared the marks in their entireties, we have thus accorded greater weight to the wording of Respondent’s registered mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (in articulating reasons for reaching a conclusion on the issue of likelihood 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 upon a consideration of the marks in their entireties). The depiction of the two hands, the tree and the heart in the mark would not be pronounced when calling or referring to the mark.<sup>21</sup> Turning to the wording, Respondent depicts SAMSUNG in a smaller font

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<sup>21</sup> Mr. Steel stated the elements of the logo “focus [on] areas of health, education and sustainability.” Steel. Depo. at 17, 45 TTABVUE 21. There is no evidence establishing that

size and on a different line than HOPE FOR CHILDREN, which is depicted in a single and larger font size, on one line. For this reason, we find that SAMSUNG, which Respondent states is the first part of the mark and entitled to greater weight, is not the dominant portion of the mark.

Petitioner does not incorporate a design element in its depiction of its mark. *See* Petitioner's mark as used on its webpage,<sup>22</sup> reproduced below:



In addition, the word FOUNDATION in Petitioner's mark merely identifies the nature of Petitioner.<sup>23</sup> *Cf., In re Cell Therapeutics, Inc.*, 67 USPQ2d 1795 (TTAB 2003)

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consumers recognize the elements of the logo as referring to health, education and sustainability.

<sup>22</sup> 21 TTABVUE 54.

<sup>23</sup> *See* definition of "foundation" from *The American Heritage Dictionary of the English Language*, *i.e.*, "an institution founded and supported by an endowment." 20 TTABVUE 101.

“Inc.” has no trademark significance); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998) (“Inc.” has no trademark or service mark significance because it merely “indicates the type of entity that performs the services.”).

Due to the shared wording HOPE FOR CHILDREN, which is emphasized in Respondent’s mark, we find that the marks are similar in sound, appearance and meaning. The addition of Respondent’s house mark SAMSUNG and the design element does not differentiate the marks. Generally, the addition of a house mark will not avoid confusion and, in fact, may serve to increase likely confusion. *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260-61 (Fed. Cir. 2010) (applicant’s mark ML is likely to be received as a shortened version of registrant’s mark, ML MARK LEES (stylized), when used on the same or closely related skin-care products); *In re Chica, Inc.*, 84 USPQ2d 1845, 1848-49 (TTAB 2007) (CORAZON BY CHICA with design, and CORAZON with design, both for jewelry, likely to cause confusion, noting that, “to many consumers, applicant’s mark for the identical word ‘Corazon’ followed by the phrase ‘BY CHICA’ will simply be viewed as the identification of the previously anonymous source of the goods sold under the mark CORAZON”).<sup>24</sup> We therefore find that consumers who are familiar with Petitioner’s HOPE FOR CHILDREN FOUNDATION mark for services involving “training to reduce crimes of sexual assaults and domestic violence against children and adults,

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<sup>24</sup> We recognize that the addition of a house mark or other matter may obviate confusion, when the additional matter, including house marks, conveys a significantly different commercial impression considering the marks in their entirety. *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1356-57 (Fed. Cir. 2004). This exception is not applicable to this case because the addition of SAMSUNG does not convey a significantly different commercial impression.

and ... provid[ing] resources and support of them” and raising of funds for children related causes, would be likely to believe, upon encountering Respondent’s mark, that the services originated with or are associated with or sponsored by the same entity.

*Similarity of the services*

As discussed above, Petitioner has prior rights in connection with raising funds for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them” including walkathons. Respondent’s International Class 36 services are “charitable fund raising services, namely, raising funds for children related causes through sports events.” Both parties’ services pertain to charitable fundraising benefiting children, and we see little difference between a walk-a-thon and a sporting event, which may include a run and/or walk. Thus, we find that the parties’ charitable fundraising services are highly similar to one another, and to the extent that Petitioner’s charitable fundraising services involves walkathons, the services are identical to one another.

In addition, we find that the record establishes that a relationship exists between Petitioner’s in person and/or online video streaming training and education services and Respondent’s charitable fundraising services. Petitioner has submitted the evidence relied on by the assigned Examining Attorney in refusing Petitioner’s application on the ground of likelihood of confusion with the mark of the ‘441 registration. *See:*

*i. Internet Evidence*

- www.sarcbv.org - Sexual Assault Resource Center listing “Teal Ribbon Run 5k” and educational prevention and training services.<sup>25</sup>
- Google webcache for www.stopcsa.org - Stop the Silence website reporting next annual Race to Stop the Silence and also indicates that its mission is to stop child sexual abuse and also provides training.<sup>26</sup>
- Google webcache for www.laurel-house.org - Laurel House Working to End Domestic Violence – promotes a “5k Run/Walk” and indicates that the organization “provides training to thousands of students, medical professionals, law enforcement officers and community members.”<sup>27</sup>

*ii. Third-Party Registration Evidence*<sup>28</sup>

Registration No. 3484044 for the mark NATIONAL NETWORK TO END DOMESTIC VIOLENCE FUND for “Charitable fundraising services in the field of domestic violence; Charitable services, namely, providing financial support to help domestic violence victims” in International Class 36, and “Educational services, namely, conducting educational programs, workshops, conferences and seminars in the field of domestic violence” in International Class 41.

Registration No. 3871517 for the mark HIGHER GROUND for “Charitable fundraising on behalf of victims of domestic violence” in International Class 36, and “Educational services, namely, conducting educational programs,

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<sup>25</sup> 18 TTABVUE 28. Internet evidence may be used to demonstrate that services emanate from a common source.

<sup>26</sup> 18 TTABVUE 38.

<sup>27</sup> 18 TTABVUE 42.

<sup>28</sup> 18 TTABVUE 86 - 99. Registration evidence may be used to demonstrate that services are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

workshops, and seminars in the field of domestic violence;” in International Class 41.

Registration No. 4018194 for the mark A WRITE TO HEAL for services including “Charitable fund raising; ... Charitable fundraising services by means of organizing and conducting special events” in International Class 36, and “Educational services, namely, conducting classes, seminars, conferences, workshops in the fields of violence ... Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning domestic abuse ... Entertainment services, namely, an on-going series featuring Empowering Survivors of Domestic Violence provided through cable television, film, webcasts, radio broadcasts” in International Class 41.

Registration No. 4258387 for the mark DUDES FOR DIAPERS for *inter alia* “charitable fundraising” in International Class 36 and “Educational services, namely, conducting ... informational programs in the field of domestic violence and abuse, and the prevention of domestic violence and abuse” in International Class 41.

Petitioner has established that (i) its services involving raising funds for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them” are highly similar to Respondent’s “Charitable fund raising services, namely, raising funds for children related causes through sports events” in International Class 36 services, and, in the case of walkathons, are essentially the same as such services, and (ii) its training services and Respondent’s International Class 36 charitable fundraising services are related to one another.

As for Respondent’s online retail store services in International Class 35, Petitioner has offered no argument or evidence regarding a similarity between such

services and Petitioner's training services or services regarding the raising of funds for children related causes, and none is apparent to us. It therefore has not established any relationship between these services.

*Trade Channels and Classes of Purchasers*

Petitioner argues that trade channels and purchasers overlap because both parties provide their services at retail stores to customers of such stores. Petitioner cites to Ms. Spikes' testimony ("we generally set up in front of a store, but it could be a movie theater or a mall, different things, different places, and we talk to people about the services that we provide and we pass out our business cards")<sup>29</sup> and Mr. Steel's testimony ("We typically partner with retailers as a part of Samsung Hope for Children, and that will involve both of us agreeing on a particular charity partner, and then together we would drive some campaign to build awareness, as well as to donate funds to that specific charity, partnered together.")<sup>30</sup> Respondent did not respond to Petitioner's arguments concerning trade channels and purchasers.

*i. International Class 35 Services*

The quoted passages from Ms. Spikes' and Mr. Steel's testimony do not establish that the trade channels overlap for Petitioner's services involving "training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them," and Respondent's International Class 35

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<sup>29</sup> Spikes Depo. at 6, TTABVUE.

<sup>30</sup> Steel Depo. at 22, 45 TTABVUE 26.

retail store services.<sup>31</sup> Although both services may be offered to members of the general public, one is offered inside a store and the other is outside the store; the locations are different. Further, the Board has stated in the past that “the mere fact that both [plaintiff] and [defendant] are presumed to market to general consumers, including businesses and individuals, does not dictate a conclusion that confusion is likely to arise.” *Sports Auth. Mich. Inc. v. PC Auth. Inc.*, 63 USPQ2d 1782, 1794 (TTAB 2001).

There is no argument from Petitioner and no persuasive evidence that the trade channels and purchasers for Petitioner’s raising funds for children related causes and Respondent’s International Class 35 retail store services are related. Petitioner has not carried its burden of proof regarding any such trade channels or purchasers.

*ii. International Class 36 Services*

Ms. Spikes’ and Mr. Steel’s testimony establish nothing regarding the trade channels and classes of purchasers for any of Petitioner’s services and Respondent’s International Class 36 services. (The International Class 36 services pertain to raising funds for children related causes *through sports events*, not through promotions in retail stores.)

We have found, however, that Petitioner’s services involving the raising of funds for “training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them” overlap with

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<sup>31</sup> Petitioner has not established that there is a relationship between such services. See discussion *supra*.

Respondent's International Class 36 services. Based on the recitation of services of the '441 registration, Respondent's trade channels and classes of consumers consist of all the usual channels of trade for the services of the '441 registration, and we consider such services to be available to all potential classes of ordinary consumers for such services. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (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, Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (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"). Because Respondent's International Class 36 "charitable fund raising services, namely, raising funds for children related causes through sports events" encompass Petitioner's services involving the raising of funds for "training to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them" including by means of walkathons, which we found to be substantially similar to a run/walk charitable event, we find the trade channels and classes of purchasers for Respondent's International Class 36 services overlap with those of Petitioner's fundraising services.

There is no argument from Petitioner, and no persuasive evidence that the trade channels and classes of purchasers for Petitioner's "training [services] to reduce crimes of sexual assaults and domestic violence against children and adults, and ... provid[ing] resources and support of them" and Respondent's International Class 36 services are related. Petitioner has not carried its burden of proof regarding any such trade channels or classes of purchasers.

In summary, we find that Petitioner has established that the trade channels and classes of purchasers are related only as regards Petitioner's fundraising services and Respondent's International Class 36 services.

*Strength of Petitioner's Mark*

Evidence of use by third parties of similar marks on similar goods is probative of the ultimate inquiry of likelihood of confusion only when such use is so extensive that "customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different [such] marks on the basis of minute distinctions." *Palm Bay Imports*, 73 USPQ2d at 1694. *See also Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015). "[T]he strength of a mark is not a binary factor" and "varies along a spectrum from very strong to very weak." *Juice Generation*, 115 USPQ2d at 1675-76 (internal citations omitted). "The weaker [the registrant's] mark, the closer [a petitioner's] mark can come without causing a likelihood of confusion and thereby invading what

amounts to its comparatively narrower range of protection.” *Id.* at 1676 (internal citations omitted). *See also Palm Bay*, 73 USPQ2d at 1693 (“Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”). “In determining the strength of a mark, we consider both its inherent strength based on the nature of the mark itself and its commercial strength, based on the marketplace recognition value of the mark.” *American Lebanese Syrian Assoc.* 101 USPQ2d at 1028 (citing *Tea Board of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006) and *McCarthy on Trademarks and Unfair Competition* § 11:83 (4th ed. 2011) (“The first enquiry focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”)).

Respondent argues that “‘hope for children’ is inherently weak as it describes the nature of the involved services, namely, services for children. This is evidenced by the fact that Registrant was required to disclaim the words ‘FOR CHILDREN’ for services in class 36 in its registration for SAMSUNG HOPE FOR CHILDREN, on the grounds that the words are merely descriptive of the services ‘raising funds for children related causes.’”<sup>32</sup>

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<sup>32</sup> Respondent’s brief at 15, 59 TTABVUE 20.

In addition, Respondent argues that Petitioner's mark is commercially weak in view of the following webpages submitted with the affidavit of Austin Phillips, a law clerk at Respondent's law firm:<sup>33</sup>



- stating, “Online Survivor Support ... our live chat survivor support site offering virtual hope, love and encouragement to victimize people globally”;<sup>34</sup>



- “Through the generosity of sponsors, an HFC child receives a home, an education, healthcare, love, support, nurturing, and encouragement from Christian adults” and “For an investment \$27 per month, you can pay for a student's tuition and for an optional additional donation of \$20 per month, you can provide a daily lunch for a student” in Haiti;<sup>35</sup>

For \$35 per month, you can sponsor a child or young adult

For \$27 per month, you can sponsor a student for school tuition

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<sup>33</sup> Respondent also submitted into the record the webpages from foreign charities. Even though these foreign charities' webpages are accessible in the United States, as Respondent maintains, they have no probative value because there is no reason to suspect that consumers of such services in the United States would access the webpages of foreign charities.

<sup>34</sup> Exh. A, Phillips Aff., 43 TTABVUE 16.

While we do not accept the statements contained in the websites as proving what is asserted in the statements, the fact that the sites make the statements show that consumers have been exposed to such statements. *See, e.g., Swiss Watch Int'l Inc. v. Fed'n of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1735 (TTAB 2012); *Safer Inc. v. OMS Invs. Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010).

<sup>35</sup> Exh. B, Phillips Aff., 43 TTABVUE 29, stating, *inter alia*, “Is there hope for the children of Haiti? I think that question is best answered one child at a time.”

For \$47 per month, you can sponsor a student for tuition and lunch



- , stating “Steven’s Hope is the charity in the Inland Empire” and “Steven’s Hope for Children helps families of seriously ill or injured children by providing assistance to lessen the burden of the families, and surround them with caring compassion and kindness”;<sup>36</sup> p. 736



- , stating “CCII’s mission is to bring material, medical, educational and caring support for orphaned, abandoned and disadvantaged children worldwide, regardless of their race, religion, or national identity”;<sup>37</sup>



- stating, “Texas CASA Partners With The CASA Community To Be A Voice For Abused And Neglected Children Through The Power Of Volunteer Advocacy And Change In The Child Protection System”;<sup>38</sup>



- stating, “Hope for Children of Africa, a non-profit with 501(c) 3 status

<sup>36</sup> Exh. C, Phillips Aff., 43 TTABVUE 120.

<sup>37</sup> Exh. E, Phillips Aff., 43 TTABVUE 167.

<sup>38</sup> Exh. F, Phillips Aff., 43 TTABVUE 178.

through United Charitable Programs, has a clear and unique goal: to inspire self-sufficiency of communities by giving assistance with projects of educational opportunities, then working with village leadership to transfer responsibility for maintaining long-lasting success”;<sup>39</sup>



-  , stating, “The mission of Homes of Hope for Children is to serve children in crisis throughout Mississippi by providing strong, Christian homes to every child that lives on campus while ensuring that each child is loved unconditionally and has their physical, spiritual, and emotional needs met”;<sup>40</sup>

**Hope for Children  
with Autism**

-  , stating, “Parent Training offers parents an opportunity to learn how to help their children with autism spectrum disorders (ASD) achieve goals they select for family life. This short term service usually consists of three 90 minute sessions for parents and their child up to 5 years old. The goals of the program are:

Helping parents gain a better understanding of their child’s needs

Helping the child achieve social and behavioral goals for family life

Helping parents learn useful skills to continue on their own”;<sup>41</sup>



-  stating, “We are parents of children with severe forms of epilepsy ... We lobby to make

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<sup>39</sup> Exh. G, Phillips Aff., 43 TTABVUE 183.

<sup>40</sup> Exh. H, Phillips Aff., 43 TTABVUE 218.

<sup>41</sup> Exh. J, Phillips Aff., 43 TTABVUE 293.

high-CBD/low-THC cannabis extract available in Utah, and across the United States, to those who suffer with intractable epilepsy”;<sup>42</sup>



- stating, “Our services are offered, in anticipation of greater ease, courage and hope for their recipients and their families.

Financial Assistance for people seeking select alternative modes of therapy

Basketful of Smiles’ for patients; newly diagnosed, through completion of protocol

“On hand’ small gifts made available, especially for older children (ages passed over normally)

Baskets with essential items, for families with no support, in ICU and other difficult situations

Supplies for bereavement carts, for creating memories of those who passed

Musical instruments, art supplies and other items for creative arts therapy program.

Culturally and developmentally age appropriate items for pediatric emergency rooms, pre and post op surgical units, pediatric units, Intensive Care unit, playrooms and patient rooms

Mother’s and Father’s day gifts for parents of ill children in the hospital, inspirational items for parents lounge;<sup>43</sup>

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<sup>42</sup> Exh. K, Phillips Aff., 43 TTABVUE 317.

<sup>43</sup> Exh. L, Phillips Aff., 43 TTABVUE 436.

- HOPE FOR CHILDREN Charity Golf Classic, stating, “will raise awareness and funds for rehabilitation services for children with special needs”;<sup>44</sup>



- offering as upcoming events “CPR /first aid class,” and “date night”;<sup>45</sup> and



- stating, “Hope for Children-United States (HFC-US) is a US 501(c)(3) organization dedicated to improving the lives of children and families in Ethiopia impacted by HIV/AIDS. ... Funds raised are for specific projects that have been pre-approved by HFC-US’s Board of Directors as being in furtherance of our exempt purposes.”<sup>46</sup>

Most of these websites do not use “hope for children” as a single phrase but rather use “for children” to communicate that the connected services are “for children.” *See, e.g.,* ARK OF HOPE For Children, HOPE for the children of Haiti, STEVEN’S HOPE for children, HOMES OF HOPE for Children, Hope for Children with Autism, and UNITING HOPE 4 Children.<sup>47</sup> As for the eight remaining third-party websites identified above, there is no evidence regarding the extent of such third-party use.

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<sup>44</sup> Exh. M, Phillips Aff., 43 TTABVUE 458.

<sup>45</sup> Exh. N, Phillips Aff., 43 TTABVUE 460.

<sup>46</sup> Exh. O, Phillips Aff., 43 TTABVUE 464.

<sup>47</sup> Further, the webpage in the record from Butler Institute for Families, Exh. D, Phillips Aff., 43 TTABVUE 165, includes “Hope for Children” but does not identify services that are charitable or educational in nature. The probative value of this exhibit is limited.

The Federal Circuit has stated that “[t]he probative value of third-party trademarks depends entirely upon their usage. ... As this court has previously recognized where the record includes no evidence about the extent of third-party uses the probative value of this evidence is thus minimal.” *Id.* (quoting *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1561 (Fed. Cir. 2001)). Further, the evidence here is less voluminous than the evidence in *Juice Generation*, where at least 26 relevant third-party uses or registrations were of record, *see* 115 USPQ2d at 1672 n. 1, or in *Jack Wolfskin*, where there were at least 14 relevant third-party uses or registrations of record, *see* 116 USPQ2d at 1136 n. 2. We thus find registrant has not established that HOPE FOR CHILDREN is not commercially weak.

Petitioner also argues that its mark is strong because it has used its mark since 1998, its mark is inherently distinctive, and a large number of visitors have accessed its website.<sup>48</sup> We are not persuaded by its arguments; use for approximately 15 years in and of itself is not a basis for finding a mark is strong, and Petitioner has not offered any evidence for us to compare the number of visitors to its website with those of other entities.

In view of the foregoing, we find Petitioner’s mark HOPE FOR CHILDREN FOUNDATION, while suggestive of Petitioner’s services and not inherently strong, is not sufficiently weak to allow for the registration of Respondent’s mark.

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<sup>48</sup> Petitioner’s brief at 17, 56 TTABVUE 21.

*Actual Confusion, Time and Conditions of Concurrent Use*

Respondent asserts that there have been no instances of actual confusion between the parties' marks despite being used concurrently for more than six years and both parties' marks having been exposed to many people.<sup>49</sup>

The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by the parties of their marks for a significant period of time in the same markets. *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff'd*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). In other words, for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred. *Barbara's Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred); *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404, 1406-1407 (TTAB 1988); *Central Soya Co., Inc. v. North American Plant Breeders*, 212 USPQ 37, 48 (TTAB 1981) ("the absence of actual confusion over a reasonable period of time might well suggest that the likelihood of confusion is only a remote possibility with little probability of occurring").

We are not persuaded that there has been a reasonable opportunity for confusion to have occurred or that there has been "heavy promotion" of the marks. Although Petitioner has a presence in numerous States, the record does not demonstrate

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<sup>49</sup> Respondent's Brief at 6, 16 TTABVUE 12.

Petitioner's presence is significant in such states. Further, Petitioner's promotional efforts appear to be minor and not with regularity.<sup>50</sup> With regard to Respondent, it has promoted services devoted to supporting children's health, education and sustainability,<sup>51</sup> but there is no indication of any significant involvement of such services pertaining to abuse or the prevention of abuse. Rather, Respondent's program partners with children's charities<sup>52</sup> to generate awareness of the missions of those charities.<sup>53</sup> Mr. Steel explained how the SAMSUNG HOPE FOR CHILDREN program is promoted:

We have a range of activities. Probably the biggest annual activity is the gala ... which takes place usually in June every year. It's a big event in New York. We've also had programs with retail partners to leverage in-store presence as well as online presence. We have had ads in newspapers, magazines to promote it. We've also done online campaigns, and sometimes even some physical events like launch events or announcements.<sup>54</sup>

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<sup>50</sup> For example, Ms. Kirby testified that Petitioner maintained a booth at an annual country and western festival, but Petitioner evidently participated only on three occasions. Kirby Depo. at 47 - 48, 23 TTABVUE 51 - 52.

<sup>51</sup> Steel Depo. at 16 - 17, 45 TTABVUE 20 - 21; Steel Depo. Exhs. 2 - 4, 45 TTABVUE 118 - 37.

<sup>52</sup> Respondent's webpage states, "Through partnerships with the Boomer Esiason Foundation, Dan Marino Foundation, Jimmie Johnson Foundation, Matthew McConaughey's J.K. livin Foundation and Jennifer Lopez's Maribel Foundation, Samsung Hope for Children has raised over \$25 million to ensure the future health of our children. We invite you to help us share the wonder of life, learning and our planet." Steel Depo. Exh. 3, 45 TTABVUE 139.

<sup>53</sup> Steel Depo. at 33, 45 TTABVUE 37.

<sup>54</sup> Steel Depo. at 21, 45 TTABVUE 25.

It is unclear, however, how the gala or other events pertain to the services which are the subject of the '441 registration, involved in this proceeding.<sup>55</sup>

Because there has not been a reasonable opportunity for actual confusion to have occurred, and because “a showing of actual confusion is not necessary to establish a likelihood of confusion,” *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983)), we find that the *du Pont* factor regarding an absence of actual confusion is neutral.

*Conditions Under Which and Buyers to Whom Sales are Made*

Petitioner has argued, the “consumers of both parties’ services include members of the general public, so that this factor favors a finding of likelihood of confusion.”<sup>56</sup> Simply because the general public are consumers of a service does not mean that the purchases are casual without consideration. Also, there is no discussion in the briefs or evidence regarding the purchasing habits of the general public with regard to Respondent’s International Class 36 services. This *du Pont* factor, too, is neutral in our analysis.

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<sup>55</sup> Mr. Steel responded when asked whether confusion was likely, “I think it all depends on who the programs are targeting and what the programs are.” Steel Depo. at 70, 45 TTABVUE 74.

<sup>56</sup> Petitioner’s brief at 17, 56 TTABVUE 21.

*Balancing the Factors*

*i. Respondent's International Class 35 Services*

We have found that Petitioner failed to establish any relationship between either of Petitioner's services for which it has priority and Respondent's International Class 35 services involving retail store services, as well as any relationship regarding trade channels or purchasers. Thus, even though the marks are similar, Petitioner has failed to carry its burden of establishing a likelihood of confusion between any of its services for which it has priority and Respondent's International Class 35 services. The petition is hence dismissed in connection with the International Class 35 services of the '441 registration.

*ii. Respondent's International Class 36 Services*

We have found that the *du Pont* factors regarding the similarity of the marks and the similarity of the services - and the trade channels and classes of consumers at least insofar as they pertain to Petitioner's fundraising services - favor a finding of likelihood of confusion. While HOPE FOR CHILDREN FOUNDATION is a suggestive mark for Petitioner's services, Respondent's evidence of any commercial weakness does not persuade us that it is so weak as to allow for the continued registration of Respondent's mark. We therefore conclude that Respondent's SAMSUNG HOPE FOR CHILDREN and design mark used in connection with the International Class 36 services recited in the '441 registration, is likely to be confused with Petitioner's mark HOPE FOR CHILDREN FOUNDATION used with its services.

***Decision:***

The petition for cancellation is *dismissed* in connection with Respondent's International Class 35 services.

The petition for cancellation is *sustained* on the ground of likelihood of confusion in connection with Respondent's International Class 36 services.

Registration No. 4132441 shall be *partially* cancelled in due course.