

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
Dec. 11, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Team Air Express, Inc.
v.
Alliance Shippers, Inc.

Cancellation No. 92043162

Diane K. Lettelleir of Winstead PC for Team Air Express,
Inc.

James T. Hultquist of Sachnoff & Weaver, Ltd. for Alliance
Shippers, Inc.

Before Hohein, Grendel and Kuhlke, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

INTRODUCTION

Alliance Shippers, Inc., respondent herein, is the
owner of Registration No. 2445839, which is of the mark **TEAM
ALLIANCE** (in standard character form) for services recited
in the registration as "transportation of freight by air,
land, ship and rail," in Class 39. The registration issued

(on the Principal Register) on April 24, 2001, based on an application filed on October 30, 1999.

On February 24, 2004, Team Air Express, Inc., petitioner herein, filed a petition to cancel respondent's registration, alleging priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d), as the statutory ground for cancellation. Specifically, petitioner alleges that respondent's mark, as used in connection with the services recited in the registration, so resembles petitioner's prior family of **TEAM** marks, previously used and registered by petitioner in connection with various types of freight transportation services, as to be likely to cause confusion, to cause mistake, or to deceive.¹

Respondent filed an answer by which it denied the salient allegations of the petition for cancellation.

Both parties presented evidence at trial. The case is fully briefed. After careful consideration of the evidence of record and the arguments of counsel, we grant the petition for cancellation.

¹ Petitioner has pleaded ownership of three registrations, two for the mark **TEAM** (discussed *infra*) and one for the mark **TEAM TRANSPORTATION** (Reg. No. 2281102). Because petitioner's strongest case is based on the two **TEAM** registrations, and in the interest of clarity and economy, we shall base our findings and decision herein solely on the two **TEAM** registrations. However, we shall consider the **TEAM TRANSPORTATION** mark *infra* in connection with the "family of marks" issue.

The evidence of record in this case consists of:²

(1) the pleadings;

(2) the file of respondent's involved registration;

(3) petitioner's notice of reliance (with Exhibit Nos. 1-87);

(4) the February 16, 2006 Rule 30(b)(6) discovery deposition of respondent's corporate representative Larry Henry and exhibits thereto (Exh. Nos. 1-8), submitted by petitioner (hereinafter Henry 2/16/06 Disc. Depo.);

(5) the February 16, 2006 testimony deposition (noticed and taken by petitioner) of respondent's Vice President Larry Henry and exhibits thereto (Exh. Nos. 2-3), submitted by petitioner (hereinafter Henry 2/16/06 Test. Depo.);³

(6) the February 16, 2006 testimony deposition (noticed and taken by petitioner) of respondent's general counsel Mark Schwed and exhibits thereto (Exh. Nos. 9-11), submitted by petitioner (hereinafter Schwed Depo.);

(7) the February 17, 2006 testimony deposition (noticed and taken by petitioner) of respondent's expert witness

² With their briefs, petitioner and respondent have asserted and argued for and against numerous and indeed voluminous objections to each other's evidence. In this opinion, we shall take into consideration the parties' objections only insofar as they pertain to those portions of the evidence upon which we specifically base our findings and conclusions herein.

³ It appears that the parties agreed that petitioner would take Mr. Henry's discovery deposition on the same day as his testimony deposition, i.e., February 16, 2006. Respondent later took Mr. Henry's testimony deposition on June 5, 2006.

George Mantis and exhibits thereto (Exh. Nos. 12-35),
submitted by petitioner (hereinafter Mantis 2/17/06 Depo.);

(8) the February 24, 2006 testimony deposition (noticed
and taken by petitioner) of petitioner's CEO Bobby Brunson
and exhibits thereto (petitioner's Exh. Nos. 1-26 and
respondent's Exh. Nos. 1-10), submitted by petitioner
(hereinafter Brunson Depo.);

(9) respondent's notice of reliance (with Exh. Nos. 1-
16);⁴

(10) the June 5, 2006 testimony deposition (noticed and
taken by respondent) of respondent's expert witness George
Mantis and exhibits thereto (Exh. Nos. AS1-AS15), submitted
by respondent (hereinafter Mantis 6/5/06 Depo.);

(11) the June 5, 2006 testimony deposition (noticed and
taken by respondent) of respondent's vice-president Larry
Henry and exhibits thereto (Exh. Nos. AS3, AS16-AS31),
submitted by respondent (hereinafter Henry 6/5/06 Depo.);

(12) the June 5, 2006 testimony deposition (noticed and
taken by respondent) of James Beifuss (a paralegal in the
office of respondent's counsel) and exhibits thereto (Exh.
No. AS32), submitted by respondent (hereinafter Beifuss
Depo.); and

⁴ Respondent also submitted an untimely supplemental notice of
reliance, which was stricken by the Board on petitioner's motion.

(13) the August 22, 2006 rebuttal testimony deposition (noticed and taken by petitioner) of petitioner's expert witness Daniel Howard and exhibits thereto (petitioner's Exh. Nos. 62-68 and respondent's Exh. Nos. 1-4), submitted by petitioner (hereinafter Howard Depo.).

PETITIONER'S STANDING

Petitioner has made of record status and title copies of its pleaded TEAM registrations, establishing that the registrations are in force and are owned by petitioner. (Brunson Depo. Exh. Nos. 1 and 3.) These registrations are:

Registration No. 1170590, which is of the mark **TEAM** (in standard character form) for "air freight services" in Class 39, issued on September 22, 1981 based on an application filed on April 28, 1981; and

Registration No. 2282989, which is of the mark **TEAM** (in standard character form) for "freight transportation by air, ground and water" in Class 39, issued on October 5, 1999 based on an application filed on June 5, 1998.

We find that petitioner's ownership of these existing registrations suffices to establish petitioner's standing to petition to cancel respondent's involved registration.

Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).⁵

PETITIONER'S SECTION 2(d) PRIORITY

⁵ Respondent argues that petitioner lacks standing because there has been no actual confusion which has damaged petitioner. We reject this argument.

On this record, we find that the earliest date upon which respondent can rely for Section 2(d) priority purposes is October 30, 1999, the filing date of the application which matured into respondent's involved registration.⁶ The applications which matured into petitioner's pleaded registrations, i.e., Reg. No. 1170590 (of the mark TEAM for "air freight services," filed on April 28, 1980), and Reg. No. 2282989 (of the mark TEAM for "freight transportation by air, ground and water," filed on June 5, 1998), both were filed prior to respondent's October 30, 1999 filing date. Petitioner therefore has Section 2(d) priority in this cancellation proceeding as to the marks and services covered by its registrations. See *Brewski Beer Co. v. Brewski Brothers Inc.*, 47 USPQ2d 1281 (TTAB 1998). Respondent does not contend otherwise.

LIKELIHOOD OF CONFUSION

Our likelihood of confusion determination under Section 2(d) is 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.*

⁶ Respondent has asserted (solely in connection with its argument on the issue of actual confusion) that it has used its mark since 1998. However, the evidence of record on that point is vague at best. See Henry 6/5/06 Depo. at 21 (mark first used in an internal sales meeting in January 1998), and Henry 6/5/06 Depo. at 22 and Exh. No. AS18 (company newsletter dated "first quarter 1998," announcing that TEAM ALLIANCE campaign will begin "during 1998"). Even if we assume that respondent's first use was sometime in 1998, the record establishes that petitioner has used

du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Similarity of the Marks

The first *du Pont* factor requires us to determine the similarity or dissimilarity of the parties' marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc., supra*. The test, under the first *du Pont* 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 or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of

its TEAM mark since 1979. (Brunson Depo. at 16-38 and Exh Nos.

a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, in cases such as this, where the defendant's services are identical to the plaintiff's services (see discussion *infra*), the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the services were not identical. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applying these principles in the present case, we find as follows. First, we reject respondent's argument that the marks are dissimilar because respondent always uses its TEAM ALLIANCE mark in conjunction with a logo or design element and in conjunction with its house mark. Those features are not present in the mark respondent has registered, and they therefore have no relevance in our comparison of the marks. See *Vornado, Inc. v. Breuer Elec. Mfg. Co.*, 390 F.2d 724, 156 USPQ 340 (CCPA 1968); *In re Big Pig Inc.*, 81 USPQ2d 1436 (TTAB 2006). For purposes of our likelihood of confusion

2, 5-7, 10-14.)

analysis, petitioner's mark is TEAM and respondent's mark is TEAM ALLIANCE.

Next, we find that TEAM is inherently distinctive as applied to the freight transportation services involved in this case. Respondent, citing a dictionary definition of "team" (Respondent's Notice of Reliance, Exh. No. 16), as well as certain language petitioner uses in its advertisements such as "A transportation team created to meet your needs..." (Petitioner's Notice of Reliance, Exh. No. 27), argues that TEAM is generic for or descriptive of freight transportation services, and thus entitled to a narrow scope of protection.⁷ We reject this argument. We find that TEAM is an arbitrary term as applied to freight transportation services or, at most, is only slightly suggestive of such services. It is entitled to the usual scope of protection afforded to inherently distinctive marks.⁸

⁷ In its answer to the petition for cancellation, respondent counterclaimed for cancellation of petitioner's pleaded registrations on the ground that TEAM is generic for freight transportation services. Respondent later withdrew those counterclaims without prejudice, with petitioner's consent. To the extent that respondent's argument in its brief that petitioner's mark is generic or descriptive constitutes an impermissible attack on the validity of petitioner's registrations, we will not consider that argument given respondent's withdrawal of its counterclaims.

⁸ As discussed *infra*, we find that petitioner has failed to establish (under the fifth *du Pont* factor) that its mark is famous and thus entitled to the expanded scope of protection afforded to famous marks. However, we also find that respondent has failed to establish (under the sixth *du Pont* factor) that the

The word TEAM comprises the entirety of petitioner's mark, and it appears as the first word in respondent's TEAM ALLIANCE mark. Because TEAM is a distinctive word as applied to freight transportation services, and because it appears as the first word in respondent's mark, we find that TEAM is the dominant feature in the commercial impression created by respondent's mark. As discussed *infra* in connection with the connotations of the marks, the word ALLIANCE in respondent's mark has somewhat the same connotation as the word TEAM, and could be seen as merely repeating or reinforcing the significance of the word TEAM in respondent's mark. Thus, while we do not disregard the word ALLIANCE in respondent's mark, we find that it is entitled to less weight in our comparison of the marks. See *In re Chatam International Inc.*, *supra*, and *In re National Data Corp.*, *supra*.

In terms of appearance and sound, the marks are similar to the extent that they both consist of or prominently feature the word TEAM, and dissimilar to the extent that respondent's mark, but not petitioner's mark, includes the word ALLIANCE. In terms of connotation, we find that the

scope of protection to be afforded to petitioner's mark should be narrowed by the existence of widespread third-party use of similar marks in connection with similar services. Instead, we find that petitioner's mark is entitled to the scope of protection usually afforded to inherently distinctive marks.

marks are similar because the word TEAM has the same meaning in both marks. The word ALLIANCE in respondent's mark has a somewhat similar meaning to the word TEAM, in that the members of a team could be said to be "allied" or part of an "alliance." ALLIANCE therefore could be viewed by purchasers as a type of repetition or reinforcement of the word TEAM, which appears first in respondent's mark. ALLIANCE, therefore, does not significantly change the meaning of respondent's mark nor does it serve to distinguish the parties' marks in terms of connotation when the marks are viewed in their entirety.

In terms of overall commercial impression, we find that the marks are similar because the similarity which results from the presence of the distinctive term TEAM in both marks outweighs any dissimilarity between the marks which might result from the presence of the additional word ALLIANCE in respondent's mark. Respondent's mark merely takes petitioner's mark in its entirety and adds the word ALLIANCE. That additional word does not suffice to distinguish the marks in terms of overall commercial impression.

For the reasons discussed above, we find that respondent's mark is similar to petitioner's mark in terms of appearance, sound, connotation and overall commercial

impression. The first *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Similarity of the Services

We turn next to the second *du Pont* factor, which requires us to determine the similarity or dissimilarity of the parties' respective services. That determination must be made based on a comparison of the parties' services as they are identified in respondent's registration and in petitioner's registrations, respectively. We reject as irrelevant respondent's contention that the parties' respective freight transportation services, as actually provided by the parties, are dissimilar ("inter-modal" vs. "freight forwarding"). See *Octocom Systems, Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *Carl Karcher Enterprises Inc. v. Stars Restaurants Inc.*, 35 USPQ2d 1125 (TTAB 1995).

Respondent's services, as identified in its registration, are "transportation of freight by air, land, ship and rail." We find that these services as recited in respondent's registration encompass or are otherwise legally identical to the services recited in each of petitioner's pleaded TEAM registrations, i.e., "air freight services" (Reg. No. 1170590) and "freight transportation by air, ground and water" (Reg. No. 2282989). In view of the legal identity of the parties' respective services, we find that

the second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Similarity of Trade Channels

The third *du Pont* factor requires us to determine the similarity or dissimilarity of the trade channels and classes of purchasers for the parties' respective services. There are no restrictions or limitations in the parties' respective identifications of services, and we therefore must presume that the services are marketed in all normal trade channels for such services and to all normal classes of purchasers for such services. See *Octocom Systems, Inc.*, *supra*. Because respondent's services are legally identical to petitioner's services, we find that the trade channels and classes of purchasers for the parties' respective services likewise are legally identical. The third *du Pont* factor weighs in favor of a finding of likelihood of confusion.

Conditions of Purchase

The fourth *du Pont* factor requires us to consider the conditions under which the parties' services are purchased. There is no evidence in the record as to how sophisticated the purchasers of the services are, or as to the cost of the services and the degree of care with which they are or would

be purchased.⁹ Given the absence of evidence regarding the conditions of purchase, we find that the fourth *du Pont* factor is neutral in this case.

Fame of the Prior Mark

The fifth *du Pont* evidentiary factor requires us to consider evidence of the fame of petitioner's mark, and to give great weight to such evidence of fame if it exists. See *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1309 (Fed. Cir. 2002); *Recot Inc. v. Becton*, 214 F.3d 1322, 54 F.2d 1894 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992). Petitioner contends that its TEAM mark is famous because it has been in use since 1979, because petitioner's annual sales of its services under the mark are substantial, because petitioner has expended "hundreds of thousands" of dollars in promoting and advertising its services under the mark (including advertisements in trade publications and its sponsorship of the U.S. Olympic Luge Team), because petitioner has received

⁹ We reject petitioner's contention that, just because there are no restrictions as to purchasers in the parties' respective recitations of services, the purchasers of these services necessarily should be deemed to include impulse purchasers.

industry awards, and because petitioner's marketing strategy has been mentioned in a college-level marketing textbook.¹⁰

After careful consideration of all of petitioner's evidence and arguments, we conclude that petitioner's mark is not famous, for purposes of the fifth *du Pont* factor. The fact that petitioner has used its mark since 1979 supports petitioner's claim of fame, but not significantly. Petitioner's annual sales figures¹¹ are of little probative value absent evidence establishing context such as petitioner's market share. Petitioner's advertising expenditures do not seem especially impressive, given the length of time (since 1979) over which such expenditures presumably have taken place. Petitioner's sponsorship of the United States Luge Team does not establish fame in the freight transportation industry. The fact that petitioner has received industry awards does not weigh significantly in petitioner's favor in the absence of evidence establishing the significance of the awards and knowledge thereof on the part of relevant purchasers. Finally, the fact that petitioner has been mentioned in a college-level marketing textbook might prove some degree of awareness of petitioner

¹⁰ Petitioner's Notice of Reliance, Exh. No. 1 is a copy of page 49 from Churchill and Peter, Marketing: Creating Value for Customers (2d ed. 1998).

¹¹ Evidence of the amount of petitioner's annual sales was made of record under seal.

on the part of students and academics familiar with the textbook, but it does not contribute to any finding that petitioner's mark is famous among purchasers in the freight transportation industry.

We have considered petitioner's proffered evidence of fame collectively and in its entirety. For the reasons discussed above, we find that petitioner has failed to establish that its mark is famous. The fifth *du Pont* factor is neutral in this case.

Third-party Marks

The sixth *du Pont* factor requires us to consider evidence of use by third parties of similar marks in connection with similar services. "The purpose of a defendant introducing third party uses is to show 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 bases of minute distinctions." *Palm Bay Imports Inc., supra*, 73 USPQ2d at 1694. However, "[t]he probative value of third-party trademarks depends entirely upon their usage. *E.g., Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 1173 (2d Cir. 1976) ("The significance of third-party trademarks depends wholly upon their usage. Defendant introduced no evidence that these trademarks were actually used by third parties, that they were well promoted or that

they were recognized by consumers.") . " *Palm Bay Imports Inc., supra*, 73 USPQ2d at 1693.

In this case, respondent has submitted the following evidence purporting to establish third-party uses of the designation TEAM in the freight transportation industry:

- (1) printouts of seven third-party registrations of TEAM marks (Exh. Nos. 4-10 of respondent's notice of reliance);
- (2) a Thomson and Thomson search report (conducted on September 26, 2005) for TEAM (Henry 6/5/06 Depo. Exh. No. AS26¹²), which includes listings and summaries of federal and state registrations of TEAM marks, a Dun & Bradstreet business name listing, and listings of and webpage printouts purporting to show common law and domain name uses of TEAM;
- (3) a separate Dun and Bradstreet report of business names which include TEAM (Beifuss Depo. Exh. No. AS32¹³);
- (4) printouts from five third-party websites assertedly showing use of TEAM (Henry 6/5/06 Depo., Exh. Nos. AS27-AS31); and
- (5) the testimony of respondent's officer Larry Henry (Henry 6/5/06 Depo. at 42-55).

After careful review of this evidence, we find that respondent has failed to establish that third-party uses of

¹² This report also was submitted as Exh. No. 2 of respondent's notice of reliance, but such search reports are not admissible via notice of reliance. See, e.g., *Riceland Foods Inc. v. Pacific Eastern Trading Corp.*, 26 USPQ2d 1883, 1884 n.3 (TTAB 1993).

TEAM marks in the freight transportation industry are so numerous and widespread that petitioner's TEAM mark should be afforded only a narrow scope of protection under the sixth *du Pont* factor.

First, the printouts of third-party registrations from the Office's database (Exh. Nos. 4-10 of respondent's notice of reliance) are not probative evidence of third-party use, and are entitled to no weight under the sixth *du Pont* factor. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

Second, we find as follows regarding the Thomson and Thomson search report and its contents (Henry 6/5/06 Depo., Exh. No. AS26). We will assume, *arguendo* and notwithstanding petitioner's numerous objections, that the report itself is admissible and properly made of record, i.e., that a proper foundation was laid, that the document was properly authenticated, and that the document falls within an exception to the hearsay rule.¹⁴ Even if deemed

¹³ This report also was submitted as Exh. No. 3 of respondent's notice of reliance, but it is not admissible via notice of reliance. See *Riceland Foods Inc.*, *supra*.

¹⁴ The report was introduced into evidence as Exh. AS26 to the June 5, 2006 testimony deposition of respondent's vice-president Larry Henry. He testified as follows (at p. 43):

Q. I'm handing you what has been marked as AS26. Do you recognize this document, Mr. Henry?

A. Yes, I do.

Q. What is this document?

A. This is the report that Thomson & Thomson did to highlight the different uses and applications of the word "team" in the transportation and logistics business.

admissible, however, a commercial search report like this is entitled to little or no probative weight under the sixth *du Pont* factor, because it is not evidence that the marks depicted therein are in use by third parties, nor is it evidence that relevant customers are aware of any such third-party uses. See, e.g., *Tiffany & Co. v. Classic Motor Carriages Inc.*, *supra*; *Stagecoach Properties, Inc. v. Wells Fargo & Company*, *supra*.¹⁵

Q. Who is Thomson & Thomson?

A. They're a research firm that employs specialists that have access to the different databases for different subject type to run inquiries.

We note that in other reported cases where a party relied on a commercial search report, the report was introduced via the testimony of an employee of the search firm who had knowledge of the firm's searching process in general and of the parameters of the search in question. See, e.g., *Tiffany & Co. v. Classic Motor Carriages Inc.*, 10 USPQ2d 1835 (TTAB 1989); *Stagecoach Properties, Inc. v. Wells Fargo & Company*, 199 USPQ 341 (TTAB 1978). Even in the *ex parte* case relied on by respondent herein, *In re Broadway Chicken Inc.*, 38 USPQ2d 1559 (TTAB 1996), the commercial search report was accompanied by the affidavit of an employee of the search firm. In our case, it is doubtful that Mr. Henry is a competent witness to lay the foundation for and authenticate the Thomson & Thomson search report respondent relies on. However, because the report and its contents are of such limited probative value anyway (see discussion *infra*), we will assume for purposes of this decision that the foundation and authentication requirements for its admission have been satisfied. We also will assume that the report falls within an exception to the hearsay rule, such as Fed. R. Evid. 803(17) ("Market reports, commercial publications").

¹⁵ The case cited by respondent, *In re Broadway Chicken Inc.*, *supra*, does not stand for the proposition for which respondent cites it, i.e., that a commercial search report is *prima facie* evidence of third-party use under the sixth *du Pont* factor. In that case, the search reports were submitted in addition to, and merely corroborated, the actual white and yellow pages directory listings and advertisements submitted by the applicant showing third-party uses of the mark in question. The Board found that the applicant's third-party use evidence (which indeed was voluminous, with hundreds of third-party listings), when

Not only is the Thomson & Thomson report as a whole entitled to little or no probative weight under the sixth *du Pont* factor, the specific contents of the report likewise provide little support for respondent's contention that there is widespread third-party use of TEAM marks in the freight transportation industry.

In large part, the Thomson & Thomson report consists of a mere listing of USPTO records of third-party registrations and applications. However, third-party registrations may not be made of record via a commercial search report; submission of documents from the Office's own database is required. *Carl Karcher Enterprises Inc. v. Stars Restaurants Corp.*, *supra*, 35 USPQ2d at 1130 (TTAB 1995); *Riceland Foods Inc. v. Pacific Eastern Trading Corp.*, *supra*, 26 USPQ2d at 1885 (TTAB 1993); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992). In any event and as noted above, third-party registrations (much less third-party applications), even if properly made of record, are of no evidentiary value under the sixth *du Pont* factor. *Olde Tyme Foods Inc. supra*.

considered in its entirety, was probative evidence under the sixth *du Pont* factor in an *ex parte* proceeding. The Board also noted in *Broadway Chicken* that the standard of proof in an *ex parte* proceeding is more akin to the standard applied in determining whether a genuine issue of fact exists which suffices to defeat a summary judgment motion in an *inter partes* case, a standard which is less stringent than the showing required at final hearing in an *inter partes* case, such as in the case currently before us. 38 USPQ2d at 1565.

Likewise, the state trademark registrations included in respondent's Thomson & Thomson report are not evidence of third-party use under the sixth *du Pont* factor. See *Stagecoach Properties, Inc. v. Wells Fargo & Co., supra*, 199 USPQ at 357 n.17.

The next section of the Thomson & Thomson report is identified as "Web Common Law," and it includes printouts of six webpages purporting to show use of TEAM in the freight transportation industry.¹⁶ Initially, we note that Internet evidence such as this must be introduced and authenticated via the testimony of the person who downloaded and printed it. See *Starbucks U.S. Brands LLC v. Ruben*, 78 USPQ2d 1741, 1748 (TTAB 2006); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368 (TTAB 1998). Mr. Henry was not that person. Even if this evidence were deemed to be properly of record, however, we find that none of the six webpages is evidence of third-party use contemplated by the sixth *du Pont* factor. One of them is petitioner's webpage (WCL-5). Another, Team Delivery Systems (WCL-1), appears to be the webpage of a courier service, not a freight transportation business. The webpage of Horizon Services Group (WCL-2) does not show trademark or trade name use of TEAM, but refers only to the

¹⁶ We note that this section of the Thomson and Thomson report is preceded by a disclaimer stating that "[a]ny of the citations included in your search report may become unavailable at any time following the preparation of this report."

company's "management team." The webpage of Team Logistics Systems Inc. (WCL-3) is that of a Canadian company, not a United States company. The webpage at www.teamconsult.com/services/logistics.php (WCL-4) does not appear to be that of a company in the freight transportation industry, but rather that of a government computer systems procurement consultant using the name "TeAM," which stands for "Technology, Automation & Management, Inc." The last webpage (WCL-6), www.emergency-management.net, does not mention TEAM at all, but rather refers to a February 2003 conference called "TIEMS Transportation and Security Workshop Washington DC." In short, none of these webpages shows third-party use of TEAM in the freight transportation industry.

The next section of the Thomson & Thomson report is entitled "Common Law Database." The only potentially relevant entry in this section is a mere listing from the 2004 edition of "The Advertising Red Books - Advertiser's Edition" of the designation DELTA SKY TEAM in connection with "air transportation services," owned by Delta Air Lines, Inc. (CL-1.) We cannot conclude that this entry is evidence of third-party use of TEAM in connection with freight transportation services such as those involved in this case, or that relevant purchasers would be aware of such use.

The next section of the Thomson & Thomson report is a "Business Names" listing compiled from Dun & Bradstreet records. Even assuming that this listing is properly authenticated and of record (see *supra* at footnote 14), such a listing of names is of little probative value under the sixth *du Pont* factor because it is not evidence of actual third-party use of TEAM marks in the freight transportation industry, or of the relevant public's awareness thereof. See, e.g., *Tiffany & Co. v. Classic Motor Carriages Inc.*, *supra*; *Stagecoach Properties, Inc. v. Wells Fargo & Company*, *supra*. Additionally, while we cannot determine with certainty or specificity the nature of the business that many of the listed companies are engaged in, we note that many of the listings appear to be of companies engaged in businesses other than freight transportation. We further note that many of the listed companies appear to be merely small, local concerns, whose presumably limited and local usage of the "team" designation is unlikely to have had any significant impact on the relevant public under the sixth *du Pont* factor. See *Carl Karcher Enterprises Inc.*, *supra*, 35 USPQ2d at 1131.

The final section of the Thomson & Thomson report is entitled "Domain Names," and it consists of a listing of domain names which include "team" as well as printouts of the webpages corresponding to some of the listed domain

names. The mere fact that a domain name is registered is of no probative value under the sixth *du Pont* factor.

Moreover, the printouts of these webpages are not properly authenticated under *Starbucks U.S. Brands LLC, supra*, and *Raccioppi v. Apogee Inc., supra*. Even if properly of record, however, the webpage printouts constitute merely de minimis evidence of third-party use. Only three of the webpages (DN-43, DN-44, and DN-52) display third-party use of TEAM marks or names in the freight transportation industry in the United States.

In summary, we have carefully reviewed the Thomson & Thomson report submitted by respondent. Even assuming that it is admissible and properly made of record, we find that it provides but de minimis evidence of third-party use of TEAM marks in the United States freight transportation industry.

The next item of evidence relied upon by respondent in connection with the sixth *du Pont* factor is another Dun & Bradstreet listing of companies with "team" in their names, submitted as Exh. No. AS32 to the testimony deposition of James Beifuss, a paralegal in respondent's counsel's office. We again will assume, *arguendo*, that this evidence has been made of record with a proper foundation and has been properly authenticated, and that it falls within an exception to the hearsay rule. However, as noted above in

connection with the Dun & Bradstreet listing that was included in the Thomson & Thomson report, this listing is of limited probative value under the sixth *du Pont* factor because it is not evidence of actual use by the listed companies or of the relevant public's awareness of such use. *See Tiffany & Co. supra; Stagecoach Properties, Inc. supra.*

Next, respondent relies on its Exh. Nos. AS27-AS31, which are printouts of five webpages offered during the June 5, 2006 deposition of Larry Henry. It is apparent from Mr. Henry's testimony that these Internet printouts, which bear download dates of February 26, 2004 and April 2, 2004, were not downloaded by Mr. Henry but rather by respondent's counsel.¹⁷ They therefore are not properly authenticated

¹⁷ In response to questioning from respondent's counsel preliminary to the offering of Exh. Nos. AS27-AS31 into evidence, Mr. Henry testified as follows at page 47 of his June 5, 2006 deposition:

Q. How are you aware of other common law uses of the word "team"?

A. There was information provided me through counsel representative of searches for such uses and sites on the Internet.

Q. What counsel provided you with this information?

...

A. You provided that to me, my counsel, my legal counsel.

Exhibit Nos. AS27-AS31, the 2004 webpage printouts, were then each introduced via testimony similar to the following regarding Exh. No. AS27 (at Henry 6/5/06 Depo. pp. 49-50):

Q. Now, Mr. Henry, are you aware of any common law uses of the word "team" other than what we've just discussed in the Thomson & Thomson search?

A. Yes, ma'am.

Q. How are you aware of those uses?

A. I've seen it on various websites on the Internet.

under *Starbucks U.S. Brands LLC, supra*, and *Raccioppi v. Apogee Inc., supra*. However, even if we deem the webpage printouts to be properly authenticated and of record, they provide but de minimis support for respondent's argument under the sixth *du Pont* factor. One of the five printouts (Exh. No. AS28) is from the website of a company which offers transportation services for athletic teams traveling to and from athletic events; it does not show use of "team" as a mark or a trade name in the freight transportation industry. One of the remaining four webpages (Exh. No. AS31) is a duplicate of one of the websites retrieved by the Thomson & Thomson search and already discussed above (DN-52). That leaves only three 2004 printouts of webpages (Exh. Nos. AS27, AS29 and AS30) which show third-party use

Q. I'm handing you what has been marked as AS27. Do you recognize this document?

A. Yes, I do. It's a black and white print of - of a website for a transportation company.

Q. Have you - did you recently visit this website?

A. Yes, I did.

Q. When did you visit this website?

A. Last week.

Q. And is the word "team" displayed anywhere on this website?

A. Yes. In about the center of the page next to the word "name" it says Team Transportation, Limited.

It would appear that, although he may have visited the five websites in the week before his June 5, 2006 deposition, Mr. Henry's specific testimony regarding use of "team" on the websites was based on his review of the 2004 printouts supplied by counsel, rather than on any such recent review of the websites themselves. We will assume, however, that the "team" designation appeared on the websites when he viewed them the week before his deposition.

of "team" as a mark or name in the United States freight transportation industry.

Finally, respondent cites to the testimony of Larry Henry (in his June 5, 2006 deposition, at pp. 42-55) as evidence of third-party use under the sixth *du Pont* factor. To the extent that Mr. Henry's testimony on this issue is based solely on his review of the Thomson & Thomson report discussed above (Exh. No. AS26), he lacks personal knowledge of any such third-party uses and his testimony therefore lacks foundation. With respect to the four relevant 2004 website printouts provided to him by respondent's counsel (Exh. Nos. AS27 and AS29-AS31, discussed above), we will assume from his statement that he had viewed these websites "last week" that he at least was aware of their presence on the Internet at the time of his testimony. However, his knowledge of these apparent third-party users of TEAM marks or names obviously was not personal knowledge of the companies and their use of their marks, and his initial knowledge of the websites themselves was derived solely from the information given him by respondent's counsel. Even if we assume that Mr. Henry's testimony has a proper foundation, the websites (Exh. Nos. AS27-AS31) upon which his asserted knowledge is based provide merely *de minimis* evidence of third-party use under the sixth *du Pont* factor, as discussed above.

In short, we have carefully and indeed exhaustively reviewed the evidence of third-party use of TEAM marks upon which respondent relies in support of its argument under the sixth *du Pont* factor. Even assuming in respondent's favor that all of this evidence is admissible in terms of foundation, authentication and hearsay exception, we find that the only probative evidence of actual third-party use consists of the printouts of third-party webpages, and there are at most only five of them which are pertinent (Exh. Nos. AS27, AS29, AS30 and AS31 to the Henry 6/5/06 Depo., and entry DN-44 in the Thomson & Thomson report).

Taken as a whole, we find that respondent's evidence provides nothing more than a *de minimis* showing of third-party use under the sixth *du Pont* factor. Certainly, we cannot conclude that third-party uses of TEAM marks in the freight transportation industry in the United States are so numerous and widespread that the relevant purchasing public has been conditioned to distinguish among such marks based on minute distinctions. *Palm Bay Imports Inc., supra*. Thus, we conclude that the scope of protection to be afforded to petitioner's TEAM mark is not significantly constricted by third-party uses of similar marks in connection with similar services. If the sixth *du Pont* factor weighs in respondent's favor in this case, it does so only slightly.

Actual Confusion

Under the seventh *du Pont* factor, we consider the nature and extent of any actual confusion between the parties' marks. In this case, there is no evidence that any actual confusion has occurred.¹⁸

However, in the absence of evidence of actual confusion under the seventh *du Pont* factor, we proceed to the related eighth *du Pont* factor, which requires us to consider evidence pertaining to "the length of time during and conditions under which there has been concurrent [i.e., contemporaneous] use without evidence of actual confusion."

Respondent contends that it commenced actual use of its TEAM ALLIANCE mark in 1998 (a contention which is not supported by the record - see *supra* at footnote 6). Even assuming that is true, however, the evidence of record clearly establishes that respondent ceased use of the TEAM ALLIANCE mark in 2000. (Henry 2/17/06 Disc. Depo. at 78.)¹⁹

Given respondent's nonuse of the mark since 2000, we find that the absence of evidence of actual confusion (under the seventh *du Pont* factor) is neither factually surprising nor legally significant (under the eighth *du Pont* factor).

¹⁸ We give no weight, under the seventh *du Pont* factor, to petitioner's evidence purporting to show petitioner's awareness of past instances of actual confusion between petitioner's TEAM mark and the TEAM marks of third parties who are not involved in this case.

¹⁹ We note that petitioner has not pleaded or argued abandonment as a ground for cancellation in this case.

The seventh and eighth *du Pont* factors thus are neutral in this case.

Family of Marks

Petitioner contends that it owns a family of TEAM marks, and that the ninth *du Pont* factor accordingly weighs in favor of a finding of likelihood of confusion in this case.

The Board has stated that:

In order to establish a "family of marks," it must be demonstrated that the marks asserted to comprise its "family" or a number of them have been used and advertised in promotional material or used in everyday sales activities in such a manner as to create common exposure and thereafter recognition of common ownership based upon a feature common to each mark.

American Standard, Inc. v. Scott & Fetzer Co., 200 USPQ 457, 461 (TTAB 1978). See also *J&J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991). The claimed family of marks must be shown to have been in existence prior to the junior user's use of its allegedly confusingly similar mark, and the "surname" of the family of marks must be distinctive. *Marion Laboratories, Inc. v. Biochemical/Diagnostics, Inc.*, 6 USPQ2d 1215 (TTAB 1988).

As discussed above in connection with the first *du Pont* factor, we find that TEAM is a distinctive term as applied

to petitioner's freight transportation services. It thus is capable of serving as the "surname" of a family of marks. Next, the evidence in this case establishes that, beginning at least as early as 1997 and thus prior to respondent's first use of its TEAM ALLIANCE mark, petitioner in its advertisements and brochures has been using and promoting together a number of TEAM marks in connection with its various types of freight transportation services, including TEAM AIR EXPRESS, TEAM WORLDWIDE, TEAM OCEAN SERVICES, TEAM TRANSPORTATION, TEAM INTERNATIONAL, TEAM NORTH AMERICA, TEAM LOGISTICS and TEAM TECHNOLOGY. See Brunson Depo. at 62-64 and Exh. No. 25; petitioner's notice of reliance at Exh. Nos. 19, 27, 36 and 37.

Based on this evidence, we find that petitioner has established ownership of a prior family of marks consisting of the distinctive "surname" TEAM followed by an additional word or words. To the extent that respondent's TEAM ALLIANCE mark is similarly constructed and thus reasonably could be mistaken to be another member of the family of marks, the ninth *du Pont* factor weighs in petitioner's favor.

Respondent's Survey

To support its argument that there is no likelihood of confusion, respondent has submitted survey evidence (respondent's Exh. Nos. AS1-AS15) accompanied by the

testimony of its expert witness George Mantis, who designed and conducted the survey and who provided his opinion as to the results of the survey and the significance of those results to the likelihood of confusion determination in this case. Petitioner, for its part, has asserted numerous challenges to the admissibility and the probative value of respondent's survey, and has presented the testimony of its own survey expert, Daniel Howard, in support of those challenges.²⁰

Initially, we reject respondent's contention that we should draw a negative inference from the fact that petitioner did not conduct its own likelihood of confusion survey. The Board will consider survey evidence where it is offered, but does not require a party to submit such evidence nor does it draw any negative inference from a party's failure to do so. *See Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). Relatedly, we reject respondent's contention that petitioner, in attacking respondent's survey instead of

²⁰ Both respondent and petitioner have identified the survey and the testimony related thereto as being evidence pertaining to the twelfth *du Pont* factor, i.e., "the extent of potential confusion, i.e., whether de minimis or substantial." We are aware of no reported cases in which survey evidence has been considered under the twelfth *du Pont* factor, specifically. However, for purposes of our likelihood of confusion analysis in this case, we, like the parties, will consider the survey evidence in this case to be pertinent to the twelfth *du Pont* factor. Obviously, the evidence is what it is, regardless of which *du Pont* factor it is categorized under.

conducting its own survey, "improperly attempts to shift the burden of proving no confusion to the Respondent."

(Respondent's brief at 27.) Petitioner indeed bears the ultimate burden of proof in this case on the issue of likelihood of confusion. However, the burden of establishing the admissibility and probative value of a particular item of evidence is on the party offering it. It is respondent who has offered and relies upon the Mantis survey in support of its contention that there is no likelihood of confusion. It therefore is respondent who bears the burden of establishing that the survey is proper and probative evidence.

Each party has attacked the competence of the other's survey expert. We find, however, that both Mr. Mantis and Mr. Howard are competent witnesses and we therefore have considered their testimony. However, as discussed below, we have reached our own conclusion as to the probative value of the Mantis survey in this case.

What we deem to be the pertinent details regarding the survey are summarized as follows. The survey was a telephone survey conducted between November 14, 2005 and November 29, 2005. During the telephone survey, survey respondents accessed a website on their computers to view the survey stimulus. The survey sample consisted of 154 individuals employed by companies with annual revenues of

over \$1 million, doing business in the agriculture, manufacturing, wholesale trade and retail trade industries. These 154 individuals qualified for the survey because, inter alia, they "are involved in selecting companies that provide air, land, ship and rail freight transportation services for their organization."

The survey respondents were shown the following stimulus:

TEAM ALLIANCE

Transportation of freight by air, land, ship and rail

The survey respondents were given the following introductory instructions:

Shown on your screen is a name used by a company to both identify its services and to distinguish them from services provided by other companies. Below this name, in smaller type face, is a description of the kind of services on which this name is used.

The pertinent substantive questions (without their follow-up questions), and Mr. Mantis' stated "findings" with respect thereto, are as follows.

Question 1: "What company do you believe uses the name shown on your screen to identify its services and distinguish them from services provided by other companies?"

Findings: "In response to Question 1, none of the 154 respondents said that Team Air Express, Inc. is the company that uses the TEAM ALLIANCE name to identify its services

and distinguish them from services provided by other companies."

Question 3: "Do you believe that the company that uses the name shown on your screen uses any other name or names to identify its services and distinguish them from services provided by other companies?"

Question 4: "What other name or names do you believe are used by that company to identify and distinguish its services?"

Question 8: "Whether or not you know the name of the company that uses the name shown on your screen, do you believe that company uses any other name or names to identify its services and distinguish them from services provided by other companies?"

Question 9: "What other name or names do you believe are used by that company to identify and distinguish its services?"

Findings (for questions 3, 4, 8 and 9): "...twenty-nine (29) respondents answered in the affirmative that the company that uses the TEAM ALLIANCE name uses another name to identify its services and distinguish them from services provided by other companies. None of these 29 respondents mentioned Team, Team Air Express, Team Transportation, or Team Worldwide."

Question 13: "Do you believe that the company that uses the name shown on your screen did or did not have the sponsorship of, or permission from any other company in order to use this name?"

Question 14: "What other company do you believe gave its sponsorship or permission to use this name?"

Findings (for questions 13 and 14): "In response to Question 13, eleven (11) respondents stated a belief that the company that uses the TEAM ALLIANCE name has the sponsorship of, or permission from another company in order to use this name. None of these respondents mentioned Team Air Express, Inc. Further of the 8 respondents who could not identify a company in response to Question 14, none described anything specifically related to Team Air Express, Inc."

Mr. Mantis (respondent's expert) and Mr. Howard (petitioner's expert) disagree on essentially every issue pertaining to the validity of Mr. Mantis' survey and what it proves or does not prove. Among the points of disagreement are whether the proper universe and sample were selected, whether the survey's methodology was correct, whether the survey was properly administered, and whether the results were properly reported. However, we do not need to address and resolve these technical disputes, because even if we resolve them all in respondent's favor, we still conclude that the survey results are of little or no probative value on the issue of likelihood of confusion presented in this case. Put simply, the survey failed to ask the right question.

The problem with respondent's survey is apparent from its preliminary statement of purpose (Exh. No. AS1 at 1), from its summary of findings (Exh. No. AS1 at 6), and from Mr. Mantis' stated conclusion based on those findings (Exh. No. AS1 at 7). The purpose of the survey is stated as follows:

The purpose of this study is to determine whether, and if so, to what extent corporate purchasers of freight transportation services are likely to mistakenly believe that Team Air Express, Inc. uses the name TEAM ALLIANCE to identify its services and distinguish them from services provided by other companies, or that Team Air Express, Inc. has sponsored or approved another company to use this name.

The summary of findings states (in pertinent part):

Not one respondent mistakenly believes that Team Air Express, Inc. uses the name TEAM ALLIANCE to identify its services and distinguish them from services provided by other companies, or that Team Air Express, Inc. has sponsored or approved another company to use this name.

Mr. Mantis' conclusion states:

Based on the results of this study, it is my opinion that the use of the TEAM ALLIANCE name will not result in confusion. Corporate purchasers of freight transportation services do not mistakenly believe that Team Air Express, Inc. uses the name TEAM ALLIANCE to identify its services and distinguish them from services provided by other companies, or that Team Air Express, Inc. has sponsored or approved another company to use this name.

However, the issue in this case is not whether relevant purchasers ("corporate purchasers of freight transportation services") can identify petitioner, by name and unaided, as the owner or user of the mark TEAM ALLIANCE or as the company which controls use of that mark. The fact that none of the survey respondents identified or mentioned petitioner by name (or any of petitioner's marks) is of no probative value in our likelihood of confusion analysis in the present case. At most, it proves that the survey respondents had no

preexisting knowledge of petitioner or its marks.²¹ Rather, the issue before us is whether and to what extent relevant purchasers (as represented by the survey respondents), when they are exposed to the mark TEAM and also to the mark TEAM ALLIANCE, are likely to mistakenly assume that these two marks are owned, or that their use is controlled, by a single, albeit anonymous, source. See *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006).²² That question was never raised in respondent's survey, because

²¹ It appears from reported cases that the survey format used by respondent in this case is more often used by a plaintiff seeking to establish likelihood of confusion, not by a defendant seeking to disprove likelihood of confusion. If survey respondents who are shown the defendant's mark identify the plaintiff as the owner or user of the mark, that is probative evidence of likelihood of confusion. See, e.g., *Starbucks U.S. Brands v. Ruben*, supra; *Carl Karcher Enterprises Inc. v. Stars Restaurants Corp.*, supra; *Miles Laboratories Inc. v. Naturally Vitamin Supplements Inc.*, 1 USPQ2d 1445 (TTAB 1986). Likewise in the present case, if any of the survey respondents had named petitioner as the owner of the TEAM ALLIANCE mark, such response would have been probative evidence of the existence of likelihood of confusion. The converse is not true, however. That is, we cannot infer an absence of likelihood of confusion from the fact that none of the respondents identified, unaided, petitioner or its marks. Such a respondent still reasonably might be confused as to source or other affiliation if he or she was exposed in the survey (or in the marketplace) to both the TEAM mark and the TEAM ALLIANCE mark.

²² In *Ava Enterprises Inc.*, survey respondents were shown two cards, one with the plaintiff's mark and then one with the defendant's mark. They were asked, "[d]o you think that the brand name you saw first and the brand name you saw second come from the same company, different companies, or are you not sure?". Such a head-to-head comparison is not the only way to adequately gauge the potential for confusion in a likelihood of confusion survey. For example, survey respondents might have been shown one party's mark, and then a list of marks which includes the other party's mark, and then been asked if the owner of the first mark was also the owner of any of the listed marks. The point is, unless survey respondents are given an opportunity to see both of the marks at issue, we cannot see how the survey

petitioner's marks were never presented for the survey respondents' consideration.

For these reasons, we find that respondent's survey evidence is entitled to little or no weight in our analysis of the likelihood of confusion issue in this case. To the extent that the parties are correct in treating the survey evidence as evidence pertaining to the twelfth *du Pont* factor, we deem that factor to be neutral in this case.

Likelihood of Confusion - Conclusion

We have carefully considered all of the evidence of record as it pertains to the *du Pont* likelihood of confusion factors.²³ We find that the parties' marks are similar enough to cause confusion, especially given the fact that the parties' services are legally identical. See *Century 21 Real Estate Corp. v. Century Life of America, supra*. The parties' trade channels and classes of purchasers are legally identical. Although petitioner's mark is not famous, neither is its scope of protection narrowed by

can be probative on the question of whether the two marks are likely to be confused as to source or other affiliation.

²³ Petitioner has argued that we should consider certain other facts under the thirteenth *du Pont* factor ("any other established fact probative of the effect of use"). Addressing each of these in turn, we find, first, that the fact that petitioner is aware of instances of actual confusion between petitioner's mark and the marks of third parties is of little or no probative value, even if proven. Second, the fact that a court declined to find that petitioner's TEAM mark is generic or merely descriptive in prior litigation between petitioner and a third party is not probative in the present case. Finally, we find that petitioner has failed to establish that respondent adopted its TEAM ALLIANCE mark in bad faith.

widespread third-party use of similar marks in connection with similar services. There is no evidence of actual confusion, but neither is there any evidence that there has been a significant opportunity for actual confusion to have occurred. Petitioner's ownership of a family of TEAM marks weighs in petitioner's favor. Respondent's survey is entitled to little if any weight in our likelihood of confusion analysis.

Considering all of the evidence of record as it pertains to the *du Pont* factors, and for the reasons discussed above, we find that a likelihood of confusion exists in this case.

CONCLUSION

We conclude that petitioner has established its standing and its Section 2(d) ground for cancellation, and that it therefore is entitled to prevail in this proceeding.

Decision: The petition to cancel is granted, and Registration No. 2445839 will be cancelled in due course.