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| <p>This Opinion is not a Precedent of the TTAB</p> |
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Mailed: July 17, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Giulio Bertelli

Serial No. 79376970

Alexander Lazouski of Lazouski IP LLC
for Giulio Bertelli.

Mariam Aziz Mahmoudi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

NOTICE OF CORRECTION

By the Board:

On July 11, 2025, the Board issued a final decision (Decision) in connection with the above noted ex parte appeal. The Decision requires correction as to the specific Class 35, 41 and 42 services that were subject to the Section 2(d) refusal and not appealed, and the specific Class 9 goods subject to the acceptable identification requirement, and not appealed, and the resulting deletion from the application of those specific goods and services from each class.

The Board hereby issues the following corrections to the Decision:


Page 2, paragraph 1, is corrected as follows:

The Examining Attorney issued a partial refusal, refusing registration under Section 2(d) for the Class 25 goods in its entirety and refusing, in part, Classes 35, 41 and 42 for certain identified services; she also made final a requirement for an acceptable identification for the Class 9 goods in part.

Page 3, paragraph 2, is corrected as follows:

As reflected in the notice of appeal, Applicant did not appeal the partial Section 2(d) refusal for certain identified services in Classes 35, 41 and 42 or the requirement for an acceptable identification for certain identified Class 9 goods. Therefore, we consider those particular goods and services identified by the Examining Attorney in Classes 9, 35, 41, and 42 abandoned, and they will be deleted from the identification of goods and services in those classes.

The “**Decision:**” on page 12 is corrected as follows:

The Section 2(d) refusal to register Applicant’s mark **OKOM**  in Class 25 is affirmed. The following goods and services are deleted from the Class 9 identification of goods and the Class 35, 41 and 42 recitation of services.

Class 9: downloadable and recorded web application and server software for use in {please indicate the function of the software with greater specificity, controlling and managing access server applications, operating network access servers;

Class 35: retail store services in relation to fashion accessories; retail mail order retail services connected with clothing accessories; retail store services connected with the sale of clothing and clothing accessories;

Class 41: sporting activities, namely, arranging and conducting sports competitions, operation of sports camps; sports training; sports coaching; tuition in sports, namely, training in the field of sports; organisation of sail boat races; arranging and conducting sports competitions, operation of sports camps; sports and fitness services, namely, arranging and conducting sports competitions; organisation of sporting events, namely, swimming meet, soccer competition; sports training of sports players; organising of sporting activities in the nature of swimming meet, soccer competition and of sporting competitions; sports instruction services; organising of sporting events, in the nature of sports competitions and sporting tournaments in the field of soccer, swimming; sporting and recreational activities, namely, arranging and conducting sports competitions, operation of recreational camps; sport camp services; provision of information relating to sports; organisation of sports competitions; rental of sports grounds; booking of sports facilities; entertainment services relating to sport, namely, arranging and conducting sports competitions; sports-park services, namely, providing sports facilities; providing sports facilities; organisation of sports tournaments in the field of soccer, swimming; sports tuition in the nature of sports training, coaching and instruction; advisory services relating to the organisation of sporting events; providing sports entertainment information via a website; organisation of training courses relating to design; education academy services for teaching art history; organisation of non-downloadable webinars in the field of clothing design;

Class 42: design of clothing, footwear and headgear.

The application will proceed for all the goods in classes 11, 12, 14, 18, 20, 21, 22, 28, 29, 30, and 32; and only the following remaining goods and services in Classes 9, 35, 41 and 42:

Class 9: nautical apparatus and instruments, namely, underwater cameras, underwater dive computers, navigational buoys ; barometers; height gauges; marine depth finders; radio echo sounders; instruments for measuring length; pressure measuring apparatus; weight measuring instruments; instruments for measuring angles; temperature measuring instruments; speed measuring instruments; electricity measuring instruments; height measuring instruments; wind pressure gauges; distance and dimension measuring instruments; downloadable and recorded computer software for use in word processing, database management ; downloadable and recorded application software for use in word processing, database management, operation of navigation systems; downloadable and recorded software for mobile phones for use in word processing, database management, operation of navigation systems; downloadable and recorded computer programmes for data processing; downloadable and recorded software for use in word processing, database management, operation of navigation systems; nautical rescue apparatus and

instruments, namely, ring buoys for use in water rescue, rescue flares, non-explosive and non-pyrotechnic, life preservers, life saving rafts ; sensors for engines for determining velocity and acceleration ; action cameras; sports glasses; helmets for use in sports; sport whistles; mouth guards for sports; electronic sports training simulators for simulating defensive basketball plays, sports defense ; sports eyewear; head guards for sports; electronic sports training simulators; cinematographic apparatus, namely, cinematographic cameras, cinematographic projectors ; exposed cinematographic films; film production apparatus, namely, film recording apparatus, movie film developing machines, film cameras ; cases for portable media players; downloadable and recorded web application software for use in word processing, database management; downloadable and recorded web server software for use in controlling and managing access server applications, operating network access servers; downloadable and recorded computer software for creating dynamic websites; servers for web hosting; wetsuits for surface watersports;

Class 35: promotional management for sports personalities; business management of sporting clubs; promotion of sports competitions and events of others; retail store services relating to sporting goods; business management of sports people; advertising services relating to esports events; business management of sporting facilities; marketing services relating to esports events; promoting the esports events of others; talent agency services for promoting sports personalities; wholesale store services in relation to sporting articles; retail store services in relation to sporting articles; promotion of goods and services through sponsorship of international sports events; promotion of goods and services through sponsorship of sports events; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with sporting activities; retail store services for works of art provided by art galleries; promoting the artwork of others by means of providing online portfolios via a website; cinema advertising; advertising of cinemas; television advertising; promotion of goods of others through influencers; advertising; radio advertising; publicity agency services; internet marketing services; advertising of business web sites; web site traffic optimization; rental of advertising space on the internet; transportation fleet management services in the nature of tracking of fleet vehicles for commercial purposes; marketing services in the field of restaurants; business management of restaurants; restaurant management for others; business management assistance in the operation of restaurants; business management assistance in the establishment and operation of restaurants; business advisory services relating to the setting up of restaurants; business advice relating to restaurant franchising; business advisory services relating to the running of restaurants; digital advertising services; outdoor advertising; advertising agencies; advertising research; advertising analysis; promotion of business opportunities; advertising and marketing; promoting the designs of others by means of providing online portfolios via a website;

Class 41: conducting workshops relating to engine maintenance; conducting workshops relating to engine repair; training courses in engine design; sporting

services, namely, sports betting, sports and fitness services, namely, personal fitness training; country clubs providing sporting facilities; entertainment services relating to sport, namely, performing and competing in motor sports events; sports club services in the nature of health clubs for physical exercise; handicapping for sporting events; entertainment ticket agency services for sporting events; provision of information relating to motor sports; ticket reservation and booking services for education, entertainment and sports activities and events; art exhibition services; art gallery services, namely, art exhibitions, custom art drawing for others, custom art sketching for others, provided by art galleries; cultural, educational or entertainment services provided by art galleries, namely, art exhibitions, custom art drawing for others, custom art sketching for others, conducting seminars in the field of painting and sculpture; film distribution; cinema theaters; movie studios; cinema presentations, namely, cinema theaters; entertainment by film, namely, film production, film studios, organization of film festivals for entertainment purposes; television entertainment, namely, production of television programs, providing a continuing variety and comedy show broadcast over television; radio entertainment, namely, production of radio programs, providing a continuing variety and comedy show broadcast over radio; entertainment by means of telephone, namely, providing sports information by means of telephone prerecorded messages; electronic publishing services, namely, electronic publishing of books, magazines, journals; music publishing services; multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; publishing services, namely, publishing of books, magazines, journals; editorial consultation; publishing services, namely, publishing of books, magazines, journals carried out by computerised means; publishing of web magazines;

Class 42: development of engines; research in engine construction; vehicle engine design services; planning in the nature of design of internal combustion engines for land vehicles; design of sports facilities; planning and design of sports facilities; industrial design; new product design; design of medical, measuring instruments; graphic illustration services; styling in the nature of industrial design; dress designing; design of boats; textile design services; consultation services relating to interior design; design services in the field of wetsuits, waterskis; professional consultancy relating to computer technology; research relating to artificial intelligence, telecommunications technology; scientific and technological services, namely, scientific research, analysis, testing in the field of sports equipment; providing science technology information in the field of wetsuits, waterskis; professional advisory services relating to food technology in the nature of the computer or scientific technology used in the field of food; professional consultancy relating to marine technology; art work design; authenticating works of art; engineering services; mechanical engineering; technical engineering; tissue engineering; software engineering; engineering drawing; architecture, namely, architectural services; interior design; architectural services; architectural consultation; architectural and engineering services; research relating to

architecture; design of web pages; hosting web sites; rental of web servers; website development services for others; computer website design; web site design and creation services for others; hosting computer websites; creating web pages for others; website development for others; leasing of scientific laboratory, measuring instruments; rental of science and technology equipment in the nature of spectrometers, data processors, computers; design of restaurants; planning in the nature of design of restaurants; design services in relation to restaurants; pattern design, namely, dress pattern design, design of patterns for application to aircraft propellers.

This correction is non-substantive and does not affect the Decision which was only directed to the appeal of the Class 25 goods. A corrected copy of the Board's final decision is attached.

Applicant's time for filing an appeal or commencing a civil action regarding the Board's decision continues to run from the mailing date of the July 11, 2025 final decision. See Trademark Rule 2.145(d)(1), 37 C.F.R. §2.145(d)(1).

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Giulio Bertelli

Serial No. 79376970


Alexander Lazouski of Lazouski IP LLC
for Giulio Bertelli.

Mariam Aziz Mahmoudi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Goodman, English and Brock,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Giulio Bertelli (“Applicant”) filed a multi-class application seeking to register the

mark **OKOM**  on the Principal Register for goods and services in International classes 9, 11, 12, 14, 18, 20, 21, 22, 25, 28, 29, 30, 32, 35, 41 and 42.¹

¹ Application Serial No. 79376970 was filed on March 10, 2023, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), requesting an extension of protection based on Applicant’s International Registration No. 1746549 which registered on March 10, 2023. The

The Examining Attorney issued a partial refusal, refusing registration under Section 2(d) for the Class 25 goods in its entirety and refusing, in part, Classes 35, 41 and 42 for certain identified services; she also made final a requirement for an acceptable identification for the Class 9 goods in part. As the basis for the Section 2(d) refusal, the Examining Attorney cited the Principal Register mark DSU (in standard characters) for its Class 25 goods and Class 41 services.²

After the Trademark Examining Attorney made the Section 2(d) refusal and Class 9 identification requirement final, Applicant appealed to this Board.

“If an application contains multiple classes and the applicant wishes to appeal a final refusal or requirement in some but not all of the classes, the applicant should indicate in the notice of appeal the classes in which the refusal or requirement is being appealed.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 1202.01; 1202.05 (2025). “[T]he required fee must be paid for each class in which appeal is taken.” TBMP § 1202.04. “Any remaining classes for which there is a final refusal or requirement that is not the subject of the appeal will be deemed abandoned.” TBMP § 1202.01; *In re MGA Entm’t, Inc.*, 2007 TTAB LEXIS 78, at *2

description of the mark states “[t]he mark consists of the stylized wording ‘OKOM’ appearing next to an oval containing the stylized letters ‘DSU.’”

Page references to the application record are to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system. Applicant’s brief is at 4 TTABVUE; the Examining Attorney’s brief is at 6 TTABVUE.

² Registration No. 3040229, Section 8 accepted, and Section 15 acknowledged, renewed. The registration also identifies Class 16 goods.

n.1 (TTAB 2007) (applicant did not appeal the requirement to delete Class 28 goods, and the Board treated the Class 28 goods as deleted from the application).

Applicant's notice of appeal reflects that Applicant only appealed the Section 2(d) refusal as to Class 25, and paid for an appeal in one class through the electronic filing system. In his brief, Applicant indicates that he is appealing the Section 2(d) refusal in Classes 25 and 41. 4 TTABVUE 3. The Examining Attorney, in response, points out a fee was paid to appeal one class, which is Class 25. 6 TTABVUE 4.

As reflected in the notice of appeal, Applicant did not appeal the partial Section 2(d) refusal for certain identified services in Classes 35, 41 and 42 or the requirement for an acceptable identification for certain identified Class 9 goods. Therefore, we consider those particular goods and services identified by the Examining Attorney in Classes 9, 35, 41, and 42 abandoned, and they will be deleted from the identification of goods and services in those classes.

We consider the appeal only in connection with the identified Class 25 goods. We affirm the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re*

E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and others, are discussed below.

A. Similarity or Dissimilarity of the Goods

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods as described in an application or registration.” *DuPont*, 476 F.2d at 1361.

In determining the similarity or dissimilarity of the goods, we must focus on the goods as they are identified in the involved application and the cited registration. See *In re i.am.symbolic, llc*, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification

of goods within a particular class in the application or registration. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

Registrant's Class 25 goods are "Clothing, namely, T-shirts, sweatshirts, shorts, hats, cloth bibs, hooded sweatshirts, polo shirts." Applicant's Class 25 goods are "sportswear, namely, sports vests, sports over uniforms, sports bras; sports jackets; sports bibs not of paper; unitards; sports pants; jumper suits in the nature of coveralls; training shoes; moisture-wicking sports pants; moisture-wicking sports shirts; sports caps and hats; sports jerseys and breeches for sports; clothing, namely, shirts, pants, shorts; underwear; casualwear, namely, shirts, pants, shorts; formalwear, namely, dresses, gowns, tuxedos, dinner jackets; shorts; menswear, namely, shirts, pants, shorts; ladies' clothing, namely, shirts, pants, shorts; motorists' clothing, namely, gloves, jackets; neckwear."

Hats and shorts are identified in both identifications; "shirts" in Applicant's identification is broad enough to encompass Registrant's identified "T-shirts," "polo shirts" and "sweatshirts." *See In re Elbaum*, 1981 TTAB LEXIS 68, at *3 (TTAB 1981) (where goods are broadly described in the identification, it is presumed that the identification encompasses all goods of the nature and type described).

The goods are identical in part. The second *DuPont* factor weighs heavily in favor of likelihood of confusion.

B. Trade Channels and Classes of Consumers

We consider the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. We also consider the classes of consumers for

Applicant's and Registrant's goods. *Id.* The identified clothing items are general consumer goods marketed to the general population. *See In re Embiid*, 2021 TTAB LEXIS 168, at *42 (TTAB 2021) ("By their nature, shoes, shirts, and sweatshirts are "general consumer goods" that are "marketed to the general population," and that are purchased or used in some form by virtually everyone.") (internal citations omitted). There are no restrictions in Applicant's and Registrant's identifications of goods as to the channels of trade or classes of consumers.

Given the in-part legal identity of the goods, we presume the channels of trade and classes of consumers will be the same. *In re Viterra Inc.*, 671 F.3d 1358, 1362, (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *see also Genesco Inc. v. Martz*, 2003 TTAB LEXIS 123, at *28 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.").

The factors relating to trade channels and classes of consumers weigh heavily in favor of likelihood of confusion.

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En*


1772, 396 F.3d 1369, 1371 (citing *DuPont*, 476 F.2d at 1361). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at *4 (TTAB 2014).


The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 2014 TTAB LEXIS 166, at *17 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). Additionally, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

Applicant’s mark is **OKOM**  . The cited mark

is DSU. The cited mark is in standard character format, not limited to any particular font size, style or color, and might well be displayed in a simple lettering style that resembles that of Applicant’s mark. Trademark Rule 2.52, 37 C.F.R. § 2.52; *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 1349 (Fed. Cir. 2011).

The oval design feature of Applicant's mark that surrounds the word DSU and frames it, forming a background or "carrier," does not distinguish the marks. *See In re Ocean Tech., Inc.*, 2019 TTAB LEXIS 382, *17 ("[O]n the right side of the proposed marks is a common geometric shape that consumers likely would perceive as a background design or carrier to the enclosed wording, rather than as a separable design element with trademark significance."). If a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods. *CBS, Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983); *In re Dakin's Miniatures*, 1999 TTAB LEXIS 636, at *8 (TTAB 1999).

Applicant argues that the Examining Attorney, in comparing the marks, stressed the non-dominant portion of Applicant's mark,  rather than the

dominant portion of the mark . 4 TTABVUE 7. Applicant relies on *In re Hearst Corp.*, 982 F.2d 493, 494 (Fed. Cir. 1992) in support. *Id.* In *Hearst*, the appellate court reversed the Board's finding of likelihood of confusion involving the mark VARGA GIRL, finding that when "girl" was given fair weight along with VARGA, confusion was less likely with the mark VARGAS.

Applicant cites to *In re White Rock Distilleries, Inc.*, 2009 TTAB LEXIS 601, at *1 (TTAB 2009), *In re Covalinski*, 2014 TTAB LEXIS 353, at *1 (TTAB 2014), and *Parfums de Coeur Ltd. v. Lazarus*, 2007 TTAB LEXIS 36, at *1 (TTAB 2007) to support his argument that the term OKOM is dominant as "the largest and most

visually prominent element in the mark” and the most “eye catching” with “bolder larger, type.” 4 TTABVUE 5-6. Applicant asserts that “case law consistently demonstrates that when a design element in a composite mark is presented in a large, visually dominant manner, it often becomes the focal point of the mark’s commercial impression.” *Id.* at 6. Applicant argues that “if a large design element is enough to avoid confusion despite shared wording, a visually dominant word element ‘OKOM’ should unquestionably avoid confusion when compared to a short term ‘DSU’ appearing second in a less prominent position and much smaller size” especially if it is the first term that dominates the consumers perception and memory. *Id.* at 7.

The initial term OKOM in Applicant’s mark is prominent appearing first in a larger, bold font. The term DSU is in smaller font but it is highlighted by its separation from the word OKOM, both in physical distance and because it is surrounded by an oval border. This separation makes the DSU portion of Applicant’s mark stand out even though it is not as prominent as the first word OKOM in Applicant’s mark.

In comparing the two marks, the obvious dissimilarity is the inclusion of the stylized word OKOM as the first word in Applicant’s mark. But Applicant’s mark incorporates the entirety of the registered mark DSU. We find that significant here because the DSU and oval design element in Applicant’s mark stands out separate and apart from the word OKOM. Likelihood of confusion often has been found where the entirety of one mark is incorporated within another. *Hunter Indus., Inc. v. Toro Co.*, 2014 TTAB LEXIS 105, at *33 (TTAB 2014) (PRECISION and PRECISION

DISTRIBUTION CONTROL found similar). On the other hand, the marks have phonetic differences due to the presence of the term OKOM in Applicant's mark.

In terms of connotation, we find that DSU, likely has a meaning for Registrant's mark, but no apparent meaning for Applicant's mark being merely the letter combination, DSU.³ There is no evidence of third-party use or registration of DSU. The additional term OKOM in Applicant's mark appears to be a coined term with no particular meaning in relation to the goods.

In terms of commercial impression, Applicant focuses on the addition of the term OKOM in his mark as distinguishing his mark from the cited mark. However, the presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical. *In re Mighty Leaf Tea*, 601 F.3d



1342, 1347-48 (Fed. Cir. 2010) (ML confusingly similar to MARK LEES). *See, e.g., In re Toshiba Med. Sys. Corp.*, 2009 TTAB LEXIS 447, at *9 (TTAB 2009) ("The addition of a distinctive term, which is not a house mark, does not necessarily result in marks that are dissimilar"; VANTAGE TITAN and TITAN found similar for medical diagnostic machines, product mark added to registrant's mark); *In re Riddle*, 1985 TTAB LEXIS 126, at*6 (TTAB 1985) (RICHARD PETTY'S ACCU TUNE for automotive service centers confusingly similar to ACCUTUNE for automotive testing equipment; "those who encounter both the 'ACCUTUNE' automotive testing equipment and the automotive service centers offered under applicant's mark would

³ The owner of the registration is identified as Delta State University.

likely believe that Richard Petty endorsed or was in some way associated with both the goods and the services, in that both marks contain the designation ‘ACCUTUNE.’”).

With regard to the commercial impression or meaning of the marks, we consider them in their entirety and do not ignore the relevance of the OKOM element in Applicant’s mark. And while OKOM appears first in Applicant’s mark and injects a connotation not found in the registered mark, its presence does not, by itself, remove or change the overall commercial impression evoked by the common term DSU in the context of the respective goods, particularly because the term DSU is visually set apart from the term OKOM in Applicant’s mark.


Purchasers familiar with Registrant’s mark DSU upon encountering identical or similar goods marketed under Applicant’s mark, which includes the term DSU, are likely to assume that there is a source or other connection between the respective goods. In particular, “consumers encountering these marks could mistakenly believe [Applicant’s mark] is a variation on the registered mark used to identify a particular line ..., but nonetheless emanating from a common source.” *In re Dare Foods Inc.*, 2022 TTAB LEXIS 92, at *13 (TTAB 2022). *See also Double Coin Holdings Ltd. v. Tru Dev.*, 2019 TTAB LEXIS 347, at *23 (TTAB 2019) (“ROAD WARRIOR looks, sounds, and conveys the impression of being a line extension of WARRIOR.”). We find Applicant’s and Registrant’s marks share a similar commercial impression.

In their entirety, Applicant’s and Registrant’s marks are similar, particularly when we take into account the in-part identity of the goods, trade channels and

classes of consumers, and the fallibility of human memory. *In re Rsch. and Trading Corp.*, 793 F.2d 1276, 1279 (Fed. Cir. 1986). The first *DuPont* factor weighs in favor of a finding of likelihood of confusion.

II. Conclusion

The first *Dupont* factor weighs in favor of likelihood of confusion. The identical-in-part goods, channels of trade, and classes of customers also heavily favor likelihood of confusion. In view of the in-part related identical goods, overlapping trade channels and classes of customers, and the similar marks, we find, on balance, that confusion is likely.

Decision: The Section 2(d) refusal to register Applicant's mark **OKOM**  in Class 25 is affirmed. The following goods and services are deleted from the Class 9 identification of goods and the Class 35, 41 and 42 recitation of services.

Class 9: downloadable and recorded web application and server software for use in {please indicate the function of the software with greater specificity, controlling and managing access server applications, operating network access servers;

Class 35: retail store services in relation to fashion accessories; retail mail order retail services connected with clothing accessories; retail store services connected with the sale of clothing and clothing accessories;

Class 41: sporting activities, namely, arranging and conducting sports competitions, operation of sports camps; sports training; sports coaching; tuition in sports, namely, training in the field of sports; organisation of sail boat races; arranging and conducting sports competitions, operation of sports camps; sports and fitness services, namely, arranging and conducting sports competitions; organisation of sporting events, namely, swimming meet, soccer competition; sports training of sports players; organising of sporting activities in the nature of swimming meet, soccer competition and of sporting competitions; sports instruction services; organising of sporting events, in the nature of sports competitions and sporting

tournaments in the field of soccer, swimming; sporting and recreational activities, namely, arranging and conducting sports competitions, operation of recreational camps; sport camp services; provision of information relating to sports; organisation of sports competitions; rental of sports grounds; booking of sports facilities; entertainment services relating to sport, namely, arranging and conducting sports competitions; sports-park services, namely, providing sports facilities; providing sports facilities; organisation of sports tournaments in the field of soccer, swimming; sports tuition in the nature of sports training, coaching and instruction; advisory services relating to the organisation of sporting events; providing sports entertainment information via a website; organisation of training courses relating to design; education academy services for teaching art history; organisation of non-downloadable webinars in the field of clothing design;

Class 42: design of clothing, footwear and headgear.

The application will proceed for all the goods in classes 11, 12, 14, 18, 20, 21, 22, 28, 29, 30, and 32; and only the following remaining goods and services in Classes 9, 35, 41 and 42:

Class 9: nautical apparatus and instruments, namely, underwater cameras, underwater dive computers, navigational buoys ; barometers; height gauges; marine depth finders; radio echo sounders; instruments for measuring length; pressure measuring apparatus; weight measuring instruments; instruments for measuring angles; temperature measuring instruments; speed measuring instruments; electricity measuring instruments; height measuring instruments; wind pressure gauges; distance and dimension measuring instruments; downloadable and recorded computer software for use in word processing, database management ; downloadable and recorded application software for use in word processing, database management, operation of navigation systems; downloadable and recorded software for mobile phones for use in word processing, database management, operation of navigation systems; downloadable and recorded computer programmes for data processing; downloadable and recorded software for use in word processing, database management, operation of navigation systems; nautical rescue apparatus and instruments, namely, ring buoys for use in water rescue, rescue flares, non-explosive and non-pyrotechnic, life preservers, life saving rafts ; sensors for engines for determining velocity and acceleration ; action cameras; sports glasses; helmets for use in sports; sport whistles; mouth guards for sports; electronic sports training simulators for simulating defensive basketball plays, sports defense ; sports eyewear; head guards for sports; electronic sports training simulators; cinematographic apparatus, namely, cinematographic cameras, cinematographic projectors ; exposed cinematographic films; film production apparatus, namely, film recording apparatus, movie film developing machines, film cameras ; cases for portable media players;

downloadable and recorded web application software for use in word processing, database management; downloadable and recorded web server software for use in controlling and managing access server applications, operating network access servers; downloadable and recorded computer software for creating dynamic websites; servers for web hosting; wetsuits for surface watersports;

Class 35: promotional management for sports personalities; business management of sporting clubs; promotion of sports competitions and events of others; retail store services relating to sporting goods; business management of sports people; advertising services relating to esports events; business management of sporting facilities; marketing services relating to esports events; promoting the esports events of others; talent agency services for promoting sports personalities; wholesale store services in relation to sporting articles; retail store services in relation to sporting articles; promotion of goods and services through sponsorship of international sports events; promotion of goods and services through sponsorship of sports events; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with sporting activities; retail store services for works of art provided by art galleries; promoting the artwork of others by means of providing online portfolios via a website; cinema advertising; advertising of cinemas; television advertising; promotion of goods of others through influencers; advertising; radio advertising; publicity agency services; internet marketing services; advertising of business web sites; web site traffic optimization; rental of advertising space on the internet; transportation fleet management services in the nature of tracking of fleet vehicles for commercial purposes; marketing services in the field of restaurants; business management of restaurants; restaurant management for others; business management assistance in the operation of restaurants; business management assistance in the establishment and operation of restaurants; business advisory services relating to the setting up of restaurants; business advice relating to restaurant franchising; business advisory services relating to the running of restaurants; digital advertising services; outdoor advertising; advertising agencies; advertising research; advertising analysis; promotion of business opportunities; advertising and marketing; promoting the designs of others by means of providing online portfolios via a website;

Class 41: conducting workshops relating to engine maintenance; conducting workshops relating to engine repair; training courses in engine design; sporting services, namely, sports betting, sports and fitness services, namely, personal fitness training; country clubs providing sporting facilities; entertainment services relating to sport, namely, performing and competing in motor sports events; sports club services in the nature of health clubs for physical exercise; handicapping for sporting events; entertainment ticket agency services for sporting events; provision of information relating to motor sports; ticket reservation and booking services for education, entertainment and sports activities and events; art exhibition services; art gallery services, namely, art exhibitions, custom art drawing for others, custom art sketching for others, provided by art galleries; cultural, educational or entertainment

services provided by art galleries, namely, art exhibitions, custom art drawing for others, custom art sketching for others, conducting seminars in the field of painting and sculpture; film distribution; cinema theaters; movie studios; cinema presentations, namely, cinema theaters; entertainment by film, namely, film production, film studios, organization of film festivals for entertainment purposes; television entertainment, namely, production of television programs, providing a continuing variety and comedy show broadcast over television; radio entertainment, namely, production of radio programs, providing a continuing variety and comedy show broadcast over radio; entertainment by means of telephone, namely, providing sports information by means of telephone prerecorded messages; electronic publishing services, namely, electronic publishing of books, magazines, journals; music publishing services; multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; publishing services, namely, publishing of books, magazines, journals; editorial consultation; publishing services, namely, publishing of books, magazines, journals carried out by computerised means; publishing of web magazines;

Class 42: development of engines; research in engine construction; vehicle engine design services; planning in the nature of design of internal combustion engines for land vehicles; design of sports facilities; planning and design of sports facilities; industrial design; new product design; design of medical, measuring instruments; graphic illustration services; styling in the nature of industrial design; dress designing; design of boats; textile design services; consultation services relating to interior design; design services in the field of wetsuits, waterskis; professional consultancy relating to computer technology; research relating to artificial intelligence, telecommunications technology; scientific and technological services, namely, scientific research, analysis, testing in the field of sports equipment; providing science technology information in the field of wetsuits, waterskis; professional advisory services relating to food technology in the nature of the computer or scientific technology used in the field of food; professional consultancy relating to marine technology; art work design; authenticating works of art; engineering services; mechanical engineering; technical engineering; tissue engineering; software engineering; engineering drawing; architecture, namely, architectural services; interior design; architectural services; architectural consultation; architectural and engineering services; research relating to architecture; design of web pages; hosting web sites; rental of web servers; website development services for others; computer website design; web site design and creation services for others; hosting computer websites; creating web pages for others; website development for others; leasing of scientific laboratory, measuring instruments; rental of science and technology equipment in the nature of spectrometers, data processors, computers; design of restaurants; planning in the nature of design of restaurants; design services in relation to restaurants; pattern design, namely, dress pattern design, design of patterns for application to aircraft propellers.