

This Opinion Is Not a  
Precedent of the TTAB

Mailed: August 13, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Kid Brooklyn, Inc.*

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Serial No. 87654825  
Serial No. 87654829  
Serial No. 87660476  
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Thomas K. Richards of Singh, Singh & Trauben LLP for Kid Brooklyn, Inc.

John M. Gartner, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

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Before Bergsman, Larkin and Johnson, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Kid Brooklyn, Inc. (Applicant) seeks registration on the Principal Register of the marks KID BROOKLYN,<sup>1</sup> in standard characters, KID BROOKLYN NYC, in standard characters,<sup>2</sup> both for “Hats; Shirts; T-shirts; Graphic T-shirts; Short-sleeved

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<sup>1</sup> Serial No. 87654825 filed October 22, 2017, under Section 1(a) of the Trademark Act, 115 U.S.C. § 1051(a), based on Applicant’s claim of first use of the mark anywhere and in commerce as of October 7, 2017.

<sup>2</sup> Serial No. 87654829 filed October 22, 2017, under Section 1(b) of the Trademark Act, 115 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

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or long-sleeved t-shirts,” in International Class 25, and KID BROOKLYN and design, reproduced below, for “shirts; t-shirts,” in International Class 25.<sup>3</sup>



The description of Applicant’s composite word and design mark reads as follows:

The mark consists of the stylized wording “KID BROOKLYN” in orange lettering fading to yellow and fading back to orange, with the block portions of the lettering showing depth in orange and dark orange. Black in the mark represents background and is not claimed as a feature of the mark.

The color(s) orange, yellow and dark orange is/are claimed as a feature of the mark.

The Examining Attorney refused to register Applicant’s marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s marks for the identified goods so resemble the registered mark KID BREUKELLEN and design, reproduced below, for “t-shirts for babies, children and adults both male and female,” in Class 25, as to be likely to cause confusion.<sup>4</sup>

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<sup>3</sup> Serial No. 87660476 filed October 26, 2017, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use of the mark anywhere and in commerce as of October 7, 2017.

<sup>4</sup> Registration No. 5479188 registered May 29, 2018.

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*Handcrafted in Brooklyn, NYC*

The description of the mark reads as follows:

Color is not claimed as a feature of the mark. The mark consists of the design of a baby goat within a shaded circle. Above the circle is the word “KID”, below the circle is the word “BREUKELEN”. Below this is the wording “HANDCRAFTED IN BROOKLYN, NYC”.

Registrant disclaimed the exclusive right to use “Handcrafted in Brooklyn, NYC.”

We consolidate the appeals in these applications because they share common issues of fact and law. *See In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1102 (TTAB 2018); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2020). Citations to the record are to the file history of Application Serial No. 87654825 unless otherwise indicated.<sup>5</sup>

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<sup>5</sup> References to the briefs, motions and orders on appeal are to the Board’s TTABVUE docket system. Citations to the examination record refer to the Trademark Office’s online Trademark Status & Document Retrieval system (TSDR), by page number. All citations to the documents contained in the TSDR database are to the downloadable .pdf version of the documents.

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We base our determination under Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019), quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997), quoting *DuPont*, 177 USPQ at 567. “Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018), quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). See also *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004);

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*Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). *See also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”), quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002).

I. The similarity or dissimilarity and nature of the goods.

Because all the descriptions of goods include t-shirts, the goods are in part identical. Under this *DuPont* factor, the Examining Attorney need not prove, and we need not find, similarity as to each product listed in the description of goods. It is sufficient for a refusal based on likelihood of confusion that we find any item encompassed by the identification of goods in a particular class in the application and in the cited registration related. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). *See also In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015), *aff’d* 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015).

Applicant, in its brief, does not contest that the goods are related. We find that the second *DuPont* factor supports a finding of a likelihood of confusion.

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II. Established, likely-to-continue channels of trade and classes of consumers.

Because the goods described in the application and the cited registration are in part identical, we presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers) (cited in *Cai v. Diamond Hong*, 127 USPQ2d at 1801 (“With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and ‘presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods....”)); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

Applicant, in its brief, does not contest that Applicant and Registrant offer their goods in the same channels of trade to the same classes of consumers. We find that the third *DuPont* factor supports a finding of a likelihood of confusion.

III. The conditions under which and consumers to whom sales are made.

Because the relevant goods at issue are t-shirts without any limits regarding channels of trade, classes of consumers, or price, we must treat the goods as including inexpensive as well as more costly products. Therefore, we presume that purchasers of “t-shirts” include ordinary consumers who may buy inexpensive t-shirts on impulse without exercising a high degree of purchasing care. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014)

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(recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”).

IV. The strength of the cited mark, including the number and nature of similar marks in use in connection with similar goods.

Applicant contends that “any shared pronunciation or use of Brooklyn is weak and diluted, entitling Registrant’s mark to a narrower scope of protection as this term is so commercially weak.”<sup>6</sup>

Here, there are approximately **Nine Hundred and Seventy-Six (976)** trademark registrations that contain the word Brooklyn (or abbreviations thereof). Accordingly, the term “Brooklyn”, if even considered as a shared term between the marks (given the different spellings), has little or no distinctive significance, as numerous third-parties, including nearly One Thousand (1000) other trademark registrants, use the term “Brooklyn” to describe their goods and services.<sup>7</sup>

Applicant explains “[t]his information was identified by searching the word ‘Brooklyn’ on TESS and counting the registrations that contain that word. Due to the extensive volume, each of the approximately Nine-Hundred Seventy-Six trademark registrations referred to are not submitted her [sic] as part of the record, but, upon request of the Board, Applicant will so submit them.”<sup>8</sup>

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<sup>6</sup> Applicant’s Brief, p. 16 (4 TTABVUE 17).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at n. 1. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) provides “[t]he record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.” Thus, even if Applicant had submitted copies of the third-party registrations with its brief, they would have been untimely and given no consideration.

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However, Applicant did not submit copies of the purported registrations and, as the Examining Attorney notes, Applicant did not even submit a list of the m.<sup>9</sup> To make third-party registrations part of the record, an applicant must submit copies of the registrations, or the complete electronic equivalent from the USPTO's automated systems, prior to appeal, which Applicant did not. *See In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2064 (TTAB 2013); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372-73 (TTAB 2006).<sup>10</sup> Thus, Applicant failed to submit any evidence to corroborate its argument.<sup>11</sup>

In the context of the cited mark as a whole, the words KID BREUKELLEN, that part of the mark similar to Applicant's mark KID BROOKLYN, is suggestive of products from Brooklyn and, therefore, inherently distinctive.

We find that the registered mark KID BREUKELLEN and design is entitled to the normal scope of protection accorded a suggestive mark.

#### V. The similarity or dissimilarity of the marks.

We now turn to the *DuPont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. "Similarity in any one of these

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<sup>9</sup> Examining Attorney's Brief (10 TTABVUE 9).

<sup>10</sup> To be clear, the submission of a list of registrations does not make the registrations of record. *Star Belly Stitcher*, 107 USPQ2d at 2064; *Jump Designs*, 80 USPQ2d at 1372-73.

<sup>11</sup> We appreciate Applicant's desire not to clutter the record with 976 third-party registrations. Nevertheless, during the prosecution of the application, Applicant should have submitted copies of the most relevant registrations (i.e., those registrations for similar marks on similar goods). *See Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1694 (Fed. Cir. 2018) (the focus is on similar goods).



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elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019)); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai*, 127 USPQ2d at 1801 (quoting *Coach Servs. Inc.*, 101 USPQ2d at 1721). *See also* *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. 1992).

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The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Because the goods at issue are clothing products, including t-shirts, without any restrictions or limitations as to channels of trade, classes of consumers, or price, the average customer is an ordinary consumer.

The term “Kid Brooklyn” is the dominant part of Applicant’s marks KID BROOKLYN NYC and KID BROOKLYN and design. With respect to KID BROOKLYN NYC, NYC refers to New York City. Because it is geographically descriptive, Applicant disclaimed the exclusive right to use it.<sup>12</sup> It is well settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d

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<sup>12</sup> In response to the requirement in the February 1, 2018 Office Action in Serial No. 87654829, Applicant disclaimed the exclusive right to use “NYC.” July 31, 2018 Response to Office Action (TSDR 1).

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1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Viterra Inc.*, 101 USPQ2d at 1908; *Nat’l Data Corp.*, 224 USPQ at 751.

With respect to KID BROOKLYN and design, the name “Kid Brooklyn” is the dominant part of that mark because consumers normally accord words greater weight. Consumers accord the word portion of marks consisting of words and designs more weight because the words are more likely to make an impression upon purchasers, purchasers will remember the words, and purchasers would use them to request the products. *See Viterra*, 101 USPQ2d at 1908, 1911 (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 218 USPQ 198, 200 (Fed. Cir 1983)); *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987). In addition, in this case, the primary significance of the design is the stylization of the letters, which serve to reinforce the importance of the words over the design.

Likewise, when we analyze Registrant’s mark KID BREUKELLEN and design, the term “Kid Breukelen” is the dominant part of that mark. It is the largest and most prominent element visually, and the other words in the mark have been disclaimed.

“Kid Breukelen” is the phonetic equivalent of “Kid Brooklyn.” We acknowledge that there is no rule for gaging how consumers will pronounce a mark; that is, there

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is no correct pronunciation of a trademark that is not a recognized word. *See Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1409 (TTAB 2010). Absent evidence to the contrary, we must consider all reasonable possibilities. *See StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014) (“Where a trademark is not a recognized word and the weight of the evidence suggests that potential consumers would pronounce the mark in a particular way, it is error for the Board to ignore this evidence entirely and supply its own pronunciation.”). Nevertheless, consumers are likely to view and pronounce “Breukelen” as “Brooklyn” based on normal English pronunciation and because the cited mark includes the informational tagline “Handcrafted in Brooklyn, NYC” drawing an immediate connection between “Breukelen” and “Brooklyn.” For these reasons, we disagree with Applicant’s contention that the marks “will lead to wildly different pronunciations.”<sup>13</sup>

In analyzing the meaning and commercial impressions of the marks KID BROOKLYN and KID BREUKELEN and design, we keep in mind that the words KID BRUEKELEN are the dominant part of Registrant’s mark and that the relevant purchasers include ordinary consumers who may buy inexpensive t-shirts on impulse. Thus, KID BROOKLYN and KID BREUKELEN have similar meanings and engender similar commercial impressions (i.e., a Brooklyn youth). On the other hand,

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<sup>13</sup> Applicant’s Brief, p. 14 (4 TTABVUE 15).

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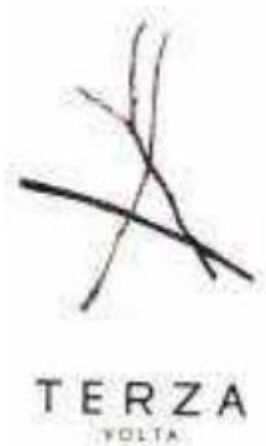
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when we include the design element, consumers may perceive Registrant's mark as meaning and engendering the commercial impression of a young goat or "kid."

Applicant argues that the baby goat design is the prominent element of Registrant's mark because it immediately catches the consumer's eye as the central portion of the mark.<sup>14</sup> Applicant likens Registrant's mark to RED NECK RACEGIRL and design, reproduced below,<sup>15</sup>



TERZA VOLTA and design, reproduced below,<sup>16</sup> and



STEVE'S and design reproduced below.<sup>17</sup>

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<sup>14</sup> Applicant's Brief, p. 11 (4 TTABVUE 12).

<sup>15</sup> *In re Covalinski*, 113 USPQ2d 1166 (TTAB 2014).

<sup>16</sup> *In re White Rock Distilleries Inc.*, 92 USPQ2d 1282 (TTAB 2009).

<sup>17</sup> *Steve's Ice Cream, Inc. v. Steve's Famous Hot Dogs*, 3 USPQ2d 1477 (TTAB 1987).

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The marks in these cases are distinguishable from Registrant's mark. In *Covalinksi*, the Board found the visual impression of the mark REDNECK RACEGIRL and design was more important because the letters RR are very large and prominently displayed. Inside the letters RR appear the rest of the letters spelling "Redneck Racegirl" in a relatively tiny typeface. The graphic devices served to draw attention to the letters RR apart from any other wording and make the rest of the letters difficult to notice. *Covalinski*, 113 USPQ2d at 1168. That is not the case before us. Here, we have the words KID BREUKELLEN are large, prominent, and encircle the design element, and are not at all difficult to notice.

*White Rock Distilleries* involved Applicant's standard character mark VOLTA versus the registered mark TERZA VOLTA and design. The Board found TERZA to be dominant part of the registered mark because it "clearly dominates over the term VOLTA in the registered mark [TERZA VOLTA and design] as TERZA appears in large bold letters above VOLTA." *White Rock Distilleries*, 92 USPQ2d at 1284. Here,

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we find that the dominant parts of the marks KID BRUEKLYN and KID BROOKLYN are similar.

In *Steve's Ice Cream*, Applicant sought to register the mark STEVE'S and design for restaurant services over opposer's registered mark STEVE'S for "ice cream sold for consumption on or off the premises." The Board dismissed the opposition because it found that the marks and the goods and services were distinguishable. *Steve's Ice Cream*, 3 USPQ2d at 1478. With respect to the marks, the Board held that the design portion of Applicant's mark was extremely suggestive that Applicant's restaurant featured hot dogs. "The highly stylized depiction of humanized frankfurters, prancing arm in arm to musical notes, creates a distinctive commercial impression." *Id.* at 1479. Here, we have in part identical goods. In addition, the design of the baby goat in Registrant's mark is not suggestive, let alone "extremely suggestive," of t-shirts.

Finally, Applicant contends that the marks have different meanings because Applicant's mark "refers to a human child depicted as a comic book superhero a/k/a 'Kid Brooklyn.'"<sup>18</sup> Applicant's contention is untenable because its description of goods does not refer to clothing with a connection with a superhero.

In interpreting the meaning and commercial impression engendered by the marks, we consider, inter alia, the goods as Applicant and Registrant describe them in the application and registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys*,

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<sup>18</sup> Applicant's Brief, p. 14 (4 TTABVUE 15).

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*Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”); *Paula Payne Prods. v. Johnson Publ’g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (“Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods”). In other words, Applicant is using and intends to use its mark in connection with, inter alia, t-shirts without any restriction or limitation to a connection with a superhero. Therefore, there is no way for Applicant’s description of goods to influence our analysis of its meaning or commercial impression because the alleged use is not reflected in the description. See *In re i.am.symbolic*, 123 USPQ2d at 1748 (“the Board may not read limitations into an unrestricted registration or application.”); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) (“There is no specific limitation and nothing in the inherent nature of Squirtco’s mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration”); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009) (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”). Therefore, we must presume that Applicant’s t-shirts could include all types of t-shirts regardless of any connection to a superhero.



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This interpretation applies even if Applicant had not sought to divide its application to remove “comic books; comics,” in International Class 16.

A multiple-class application may be viewed as a group of applications for registration of one mark in connection with goods, services, or a collective membership organization in particular classes, all combined into one application. Generally an applicant is in the same position that he or she would have been if they had filed several single-class applications instead. *G & W Labs., Inc. v. G W Pharma Ltd.*, 89 USPQ2d 1571, 1574 (TTAB 2009).

TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1403 (2018).

While the marks are not identical, we find that they are more similar than dissimilar. The first *DuPont* factor supports a finding of a likelihood of confusion.

#### VI. Conclusion

Because the marks are similar, the goods are in part identical and we presume that they are offered in the same channels of trade to the classes of consumers, we find that Applicant’s marks KID BROOKLYN, in standard character form, KID BROOKLYN NYC, in standard character form, both for “hats; shirts; t-shirts; graphic t-shirts; short-sleeved or long-sleeved t-shirts,” and KID BROOKLYN and design for “shirts; t-shirts” are likely to cause confusion with the registered mark KID BREUKELEN and design for “t-shirts for babies, children and adults both male and female.”

**Decision:** The refusals to register Applicant’s marks are affirmed.