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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Conmed Corporation

Serial No. 88355889

Erin S. Phillips of Bond Schoeneck & King, PLLC,
for Conmed Corporation.

Melissa Sturman, Trademark Examining Attorney, Law Office 125,
Heather Biddulph, Managing Attorney.

Before Wellington, Adlin, and Coggins,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Conmed Corporation (“Applicant”) seeks registration on the Principal Register of the standard character mark MIMIX for “medical cutting devices, namely, arthroscopic shavers and burs for small joints” in International Class 10.¹

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, as applied

¹ Application Serial No. 88355889 was filed on March 25, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce.

to the arthroscopic shavers and burs identified in the application, so resembles the typed mark² MIMIX for “bone implants, namely, bone replacement material composed of a synthetic powder which is mixed with a solution to form a paste, used for the surgical correction of cranial defects” in International Class 10,³ on the Principal Register as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

I. Applicable Law

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (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, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concern is not only to prevent buyer confusion as to the source of the goods, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a

² Prior to November 2, 2003, “standard character” marks were known as “typed” marks; they are legal equivalents. *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012); *In re Country Oven, Inc.*, 2019 USPQ2d 443903, *2 n.2 (TTAB 2019).

³ Registration No. 2931570, issued March 8, 2005; renewed.

newcomer. *In re Country Oven*, 2019 USPQ2d 443903 at *2-3 (citing *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993)).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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.”).

A. The similarity of the marks

Beginning with the first *DuPont* factor, the Examining Attorney argues that Applicant’s standard character mark MIMIX and Registrant’s typed mark MIMIX are identical in appearance, sound, and connotation, and commercial impression.⁴ *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (the first *DuPont* likelihood of confusion factor involves an analysis of the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression). Applicant does not dispute this,⁵ and obviously the marks are exactly the same. There is no evidence that consumers would perceive MIMIX as having a different meaning

⁴ 9 TTABVUE 4.

⁵ Indeed, Applicant presents no argument regarding the first factor in its brief; and, while discussing the second factor, Applicant argues that “[e]ven where the marks are identical, if the goods . . . are not related . . . confusion is not likely.” 7 TTABVUE 9.

Citations to the briefs in the appeal record refer to the Board’s TTABVUE docket system. Citations to the prosecution file refer to the downloadable .pdf version of the TSDR record.

or commercial impression in the context of arthroscopic shavers and burs for small joints than in the context of bone replacement material. For both goods, it evokes mimicry or close imitation and resemblance. Indeed, Applicant's own "resection blades are specifically tailored to mimic small joint anatomy,"⁶ while bone replacement material is designed to mimic the body's natural bone repair process.⁷ "Because the marks are identical, we conclude that they are likely to engender the same overall commercial impression. Accordingly, the identity between the marks is a [*DuPont*] factor that weighs heavily in favor of a finding of likelihood of confusion." *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff'd* 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017).

B. Similarity or dissimilarity of the goods and trade channels

The second *DuPont* factor concerns the "similarity or dissimilarity and nature of the goods," and the third *DuPont* factor concerns "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014) (quoting *DuPont*, 177 USPQ at 567). We make our determination under these factors based on the goods as they are identified in the application and the cited registration. *In re Ox Paperboard*, 2020 USPQ2d 10878, *5 (TTAB 2020) (citing *In re Detroit Athletic Co.*,

⁶ July 23, 2020 Reconsideration Denial TSDR 28 (conmed.com). *See also, e.g.*, June 10, 2019 Office Action TSDR 14 (depuysynthes.com) discussing design and features of arthroscopic resection tools.

⁷ *See, e.g.*, June 10, 2019 Office Action TSDR 16 (arthrex.com) discussing bone graft osteoinductive and oteoconductive potential; July 23, 2020 Reconsideration Denial TSDR 6-7 (ncbi.nlm.nih.gov) discussing mechanism, types, and incorporation of bone grafts; and TSDR 27 (conmed.com) discussing osteoinductive potential.

903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Sys., Inc. v. Houston Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

We must determine whether the degree of relatedness of the goods rises to such a level that consumers would mistakenly believe the respective goods emanate from the same source. In considering the second *DuPont* factor, we especially note that where identical marks are involved, as is the case here, the degree of similarity between the goods that is required to support a finding of likelihood of confusion declines. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) (“even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source”). With identical marks it is only necessary that there be a “viable relationship between the goods” to support a finding of likelihood of confusion. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009) (“it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such, that they would be encountered by the same persons in situations that would give rise, because of the marks, to a mistaken belief that they originate from the same source or that there is an association or connection between the sources of the goods.”). There is no per se rule that certain goods are related. *Lloyd’s Food Prod., Inc. v. Eli’s, Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).⁸

⁸ Conversely, there is no per se rule that certain goods are not related. While we have considered the non-precedential Board decision *In re TriVascular, Inc.* (Serial No. 77941535,

As noted above, Applicant's goods are "medical cutting devices, namely, arthroscopic shavers and burs for small joints;" and Registrant's goods are identified as "bone implants, namely, bone replacement material composed of a synthetic powder which is mixed with a solution to form a paste, used for the surgical correction of cranial defects."

To better understand the anatomical limitations in the identifications of goods, we note that the "cranium" is "[t]he skull" and "[t]he portion of the skull enclosing the brain; the braincase;" and a "joint" is "[a] point of articulation between two or more bones, especially such a connection that allows motion." It is also helpful to note that "maxillofacial" means "[r]elating to or involving the maxilla and the face," where the "maxilla" is "[e]ither of a pair of bones of the human skull fusing in the midline and forming the upper jaw."⁹ "Arthroscopy" is "[a] surgical procedure in which an

November 27, 2012) cited in Applicant's brief for whatever guidance it may offer, it does not involve the same goods or evidence present here, and does not warrant a general discussion. We do note, however, that unlike in the present case, the applicant in *TriVascular* introduced a declaration from a consultant with experience as in-house counsel to several medical device companies and as counselor to medical and healthcare companies regarding the development, manufacture, and marketing of medical devices; information regarding the medical procedures in which its goods are used; technical marketing materials relating to its goods; as well as information regarding types of orthopedic surgery. We cannot rely on evidence from another proceeding. It is well settled that each case must be decided on its own facts, based on the particular mark, the particular goods or services, and the particular record in each application. *See, e.g., Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973) ("Each case must be decided on its own facts and the differences are often subtle ones."); *In re Jacques Bernier Inc.*, 1 USPQ2d 1924, 1925 (TTAB 1987) ("Each case must be resolved on its own facts.").

⁹ THE AMERICAN HERITAGE DICTIONARY (ahdictionary.com, accessed February 21, 2021). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

arthroscope is passed to the interior of a joint through a small incision for the purpose of visual examination, diagnosis, or treatment.”¹⁰

To show that “the same entity commonly provides the relevant goods and markets the goods under the same mark,” the Examining Attorney introduced Internet evidence showing that Applicant, Registrant, and at least five third-party medical products companies offer bone regeneratives and shavers or burs.¹¹ This type of evidence is probative because it demonstrates that the involved goods may emanate from a common source under the same mark and consumers will encounter these goods in the same trade channels. *See e.g., In re Detroit Ath. Co.*, 128 USPQ2d at 1047 (crediting relatedness evidence that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *In re Iolo Tech., LLC*, 95 USPQ2d 1498, 1500-01 (TTAB 2010) (“The examining attorney also submitted evidence from several websites to show that various types of optimization software such as identified by applicant and technical support services such as identified by the cited registration are advertised to consumers under the same mark.”); *In re G.B.I. Tile and Stone, Inc.*, 92 USPQ2d 1366, 1371 (TTAB 2009)

¹⁰ THE AMERICAN HERITAGE DICTIONARY, July 23, 2020 Reconsideration Denial TSDR 15.

¹¹ 9 TTABVUE 5-6 (citing Internet evidence from Stryker, DePuy Synthes, and Arthrex attached to the June 10, 2019 Office Action; and Nobel Biocare and OsseoLink attached to the January 2, 2020 Final Office Action). *See also* January 2, 2020 Final Office Action TSDR 11-12 (shopzimmerbiometdental.com); and July 23, 2020 Reconsideration Denial TSDR 22 (traumapro.cz), 23 (zimmerbiomet.com), and 27 (conmed.com).

(holding the goods, while different and not interchangeable, are related because the evidence, including Internet excerpts showing third parties using the same marks for both sets of products, clearly demonstrates that there are entities that are the source of both sets of products).

While Applicant's identification limits the use of its burs to arthroscopic use on small joints, the evidence indicates that burs, in general, are used in cranial surgery. For example, both Stryker's injectable bone substitute and Registrant's bone substitute material are intended for use with cranial cuts and defects, and specifically in the "repair of neurosurgical burr holes" in the cranium.¹² The evidence is probative to demonstrate that bone replacement material and surgical burs, generally, are complementary goods: bone replacement material is used to repair surgical bur holes. *See, e.g., In re Cook Med. Techns., LLC*, 105 USPQ2d 1377, 1380 ("If goods are complementary in nature, or used together, this relatedness can support a finding of likelihood of confusion.") (citing *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984)). *Accord In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009) (holding medical MRI diagnostic apparatus and medical ultrasound devices to be related, based in part on the fact that such goods have complementary purposes because they may be used by the same medical personnel on the same patients to treat the same disease). Applicant argues that "[w]hen considering the similarity of goods in the 'medical field,' one must look at the

¹² June 10, 2019 Office Action TSDR 6 (stryker.com); July 23, 2020 Reconsideration Denial TSDR 23 (zimmerbiomet.com).

specific medical field of use and overlapping use of the goods,”¹³ and points out that its goods are “specialized surgical instruments for arthroscopic surgical procedures” while “Registrant’s goods include only compositions for cranial defect repairs;” therefore, Applicant argues, the respective goods are in unrelated medical fields.¹⁴ Applicant also argues that some of the evidence shows the respective goods under different divisions or categories of the web sites.¹⁵ However, the record does not reflect that the companies sell a wide variety of products in wildly varying fields so as to diminish the relevance of the same entities offering bone regeneratives and shavers or burs. In fact, the evidence adduced by the Examining Attorney is quite focused and shows only a few products offered by these companies. The mere fact that the goods may be available on different pages of the same websites does not diminish their relatedness.

It is true, for example, that Stryker’s bone graft material is for craniomaxillofacial procedures, while its arthroscopic burs are for orthopedic sports medicine; and DePuy Synthes’ bone matrix is for oral/maxillofacial procedures, while its shaver blades and burs are for use with rotator cuff, shoulder, and knee repair.¹⁶ It nonetheless remains that Registrant, Applicant, and each third party is a common source of bone regeneratives and arthroscopic shavers or burs. Indeed, the technical sheet for Registrant’s own shaver blades and burs states that its “different blade designs offer

¹³ 7 TTABVUE 10, 13.

¹⁴ 7 TTABVUE 12.

¹⁵ 7 TTABVUE 7.

¹⁶ June 10, 2019 Office Action TSDR 8, 11 (stryker.com), 12-13 (depuysynthes.com).

versatile solutions for a variety of arthroscopy needs” including “70 mm long blades for small joint surgeries.”¹⁷ We find this evidence probative to show that Registrant’s and Applicant’s goods emanate from multiple common sources (i.e., medical product companies) under the same mark and that consumers will encounter these goods in the same channels of trade. Applicant provides no support for its speculative argument that consumers would not believe that the goods emanate from a common source simply because they may be located in different sections of the same website.

In an effort specifically to link the cranial and small-joint areas of focus, the Examining Attorney submitted articles stating that craniomaxillofacial surgery may include work on the temporomandibular joint (TMJ) connecting the lower jawbone and skull,¹⁸ and information that “TMJ arthroscopy” may be used to diagnose TMJ disorders and “arthroscopic surgery can be as effective for treating various types of TMJ disorders as open-joint surgery.”¹⁹ The evidence is probative to demonstrate that craniomaxillofacial defects may include TMJ disorders.

Applicant continues its argument that “evidence of one company selling multiple products does not necessarily mean that the products are similar enough that a consumer would be confused as to the source of those products.”²⁰ Naturally,

¹⁷ July 23, 2020 Reconsideration Denial TSDR 22 (traumapro.cz). Although Applicant attempted to show that Registrant’s burs are limited to dental use, *See* July 2, 2020 Request for Reconsideration TSDR 11-18, the Examining Attorney’s evidence shows Registrant’s shaving blades are for small joint and arthroscopic use.

¹⁸ July 23, 2020 Reconsideration Denial TSDR 5 “Bone Grafts in Craniofacial Surgery” (ncbi.nlm.nih.gov). *See also* THE AMERICAN HERITAGE DICTIONARY (ahdictionary.com, accessed February 21, 2021) (formed by the temporal bone and the mandible).

¹⁹ July 23, 2020 Reconsideration Denial TSDR 16, 18 (mayoclinic.org).

²⁰ 7 TTABVue 12-13.

consumers will be able to distinguish Applicant's goods from the goods in the cited registration; however, that is not the standard. *See, e.g., Hydra Mac, Inc. v. Mack Trucks, Inc.*, 507 F.2d 1399, 184 USPQ 351 (CCPA 1975) ("[T]he confusion found to be likely is not as to the products but as to their source.") (citation omitted). The test is not whether consumers would be likely to confuse the goods themselves, but rather whether they likely would be confused as to their source. *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012). In this case, the evidence demonstrates that consumers are accustomed to encountering both Applicant's goods and the goods in the cited registration provided, often under the same marks, by the same sources.

As noted above, the Examining Attorney introduced evidence that the goods offered under the involved mark and cited mark are offered on the same medical product company websites. This evidence supports a finding that these goods are offered in at least one common channel of trade, that is, the websites operated by these medical products companies. Applicant argues that the trade channels are different because it relies on sales representatives to make sales "solely and exclusively to arthroscopic practitioners who specialize in arthroscopic surgical procedures and . . . to hospital accounts wherein arthroscopic surgical procedures are performed," while it presumes "that Registrant has its own sales representatives that do the same" for Registrant's goods to dentists and periodontists, "as it is the standard method of sales for surgical devices" that "representatives visit consumers to showcase each device and demonstrate how to use it."²¹ While there is no evidence for

²¹ 7 TTABVUE 14-15.

these assertions and presumptions,²² even if taken as true they would demonstrate that there is at least one other common channel of trade: in person sales representatives.

Because there are no limitations as to channels of trade in the identifications of goods in the application or the cited registration, we must presume that the identified goods move in all channels of trade normal for such goods. *See In re i.am.symbolic*, 123 USPQ2d at 1750; *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011). It is the identifications of goods that control, not what unsupported argument or extrinsic evidence may show about the specific nature of the goods as provided in the marketplace. *Stone Lion*, 110 USPQ2d at 1162; *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1165 (TTAB 2013).

Inasmuch as the goods emanate from multiple common sources under the same mark and consumers will encounter the goods in at least two overlapping channels of trade, we find that the second and third *DuPont* factors, regarding the similarity or dissimilarity of the goods and trade channels, favor a finding of likelihood of confusion.

²² “Attorney argument is no substitute for evidence.” *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005). *See also Martahus v. Video Duplication Servs. Inc.*, 3 F.3d 417, 27 USPQ2d 1846, 1849 (Fed. Cir. 1993) (“mere attorney arguments unsubstantiated by record evidence are suspect at best”). It is preferable for an applicant to submit information of this nature by means of sworn testimony. *See In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006-07 (TTAB 2014) (it is critical that Examining Attorneys be provided with detailed information with sufficient evidentiary support).

C. Conditions under which and buyers to whom sales are made

The fourth *DuPont* factor concerns “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 177 USPQ at 567. A critical question in the analysis under Section 2(d) is whose confusion should trigger a refusal of registration. *Elec. Design & Sales, Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1412 (TTAB 2010). Applicant argues that the relevant customers for the goods are two separate and distinct classes of medical specialist – arthroscopic surgeons and dental or periodontic surgeons – who have little to no exposure to the products of interest to the other.²³ Because there is no such limitation in the identification of goods for the registration, we do not limit the customers of Registrant’s bone replacement material only to dentists and periodontists; rather, we must consider all cranial surgeons. In any event, the Examining Attorney demonstrated that at least one cranial joint, the TMJ, may be diagnosed and treated with arthroscopic surgery.²⁴ We cannot limit the consumers of TMJ-related medical products to dentists and periodontists, as Applicant suggests, because the evidence repeatedly indicates that a “doctor **or dentist**” may be involved (emphasis added), a patient “may be referred to a doctor who specializes in TMJ disorders,”²⁵ and defects in TMJ function are craniomaxillofacial in nature.²⁶

²³ 7 TTABVue 16.

²⁴ July 23, 2020 Reconsideration Denial TSDR 16-21 (mayoclinic.org).

²⁵ July 23, 2020 Reconsideration Denial TSDR 20 (mayoclinic.org).

²⁶ July 23, 2020 Reconsideration Denial TSDR 5 (ncbi.nlm.nih.gov).

Applicant posits that it is typical for surgeons to focus their practice on one area and never practice in another distinct, specialized field.²⁷ This assertion appears to be supported by some of the medical supply company web sites which allow medical professionals to “Browse by Specialty” such as “Shoulder,” “Knee,” “Hand & Wrist, or “Hip.”²⁸ Considering the specialized nature of the goods in the appeal before us, we expect that any reasonable decision to purchase goods of Applicant or Registrant would in all likelihood involve the advice of a person having specialized expertise in small joint orthopedics or cranial surgery, as appropriate, even if the formalities of purchase are ultimately undertaken by a business administrator or purchasing agent. A decision made without consideration of the technical needs and preferences of the surgeons who will ultimately use the products would not, in our view, be a reasonable one. Even a wholesaler would need to consider the needs and preferences of the ultimate users in order to make a rational purchasing decision. Accordingly, we find the “relevant persons” in the present case are the small joint orthopedic specialists and cranial surgeons who would actually use the goods.

Applicant also argues that “[u]nlike consumers of other goods and services who make quick purchases at a cash register, Applicant’s and Registrant’s consumers make careful and deliberate choices for instruments to use on their patients”²⁹ The Examining Attorney argues that even sophisticated and discriminating

²⁷ 7 TTABVUE 15.

²⁸ June 10, 2019 Office Action TSDR 13 (depuysynthes.com), 18 (arthrex.com).

²⁹ 7 TTABVUE 17.

consumers are not immune from source confusion, especially where the goods are used on identical marks.³⁰ Neither Applicant nor the Examining Attorney introduced evidence about the cost of the goods, but based on the identification of goods in the application and cited registration, one would expect that all of the purchasers would exercise an increased degree of care when making their purchasing decision. Nothing in the record is to the contrary.

While small joint orthopedic specialists and cranial surgeons are two separate classes of likely highly informed, careful, and sophisticated purchasers whose selection of the goods would be based on different factors of critical and clinical importance, Applicant did not include evidence as to the sophistication of hospital account purchasers. Nonetheless, as stated above, given the nature of the goods we find it reasonable that such purchasing would involve the advice of a person having specialized expertise in small joint orthopedics or cranial surgery. Thus, the fourth factor weighs against a finding of likelihood of confusion.

D. Conclusion on likelihood of confusion

The marks are identical, and the goods have been shown to commonly emanate from a single source and travel in the same trade channels; however, the goods are sold to separate classes of sophisticated consumers. Although the purchasers may buy with care and sophistication, such care is, on balance, outweighed by the use of identical marks for related goods which travel in some of the same channels of trade.

³⁰ 9 TTABVue 9.

See In re Research Trading Corp., 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986); *Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970); *see also, HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweighed sophisticated purchasers, careful purchasing decision, and expensive goods). Weighing the *DuPont* factors, we find that confusion is likely.

II. Decision

The refusal to register Applicant's mark MIMIX is affirmed.