

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 1, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Cumberland Farms Inc.
—

Serial No. 88897129
—

Claudia S. Wan of EG America Inc.,
for Cumberland Farms Inc.

Edward Fennessy, Attorney Advisor,¹ Law Office 114,
Nicole Nguyen, Acting Managing Attorney.

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Before Bergsman, Greenbaum, and Allard,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

Cumberland Farms Inc. (“Applicant”) seeks registration on the Principal Register
of the mark:



“FRESH” and “TO GO” disclaimed, for goods ultimately identified as:

¹ Mr. Fennessy’s signature block indicates that his title is “Attorney Advisor.” For simplicity, we refer to him herein as “Examining Attorney”.



- “Fruit-based snack foods; vegetable-based snack foods; salads, namely, chicken Caesar salad, chef salad, vegetable salad, turkey and bacon cobb salad, coleslaw, potato salad, legume salad; snack mixes consisting primarily of vegetables and cheese; snack mixes consisting primarily of fruit and cheese; snack mixes consisting primarily of vegetables, fruit and cheese; hummus; meals, namely, ready-to-eat meals comprised primarily of meats, cheese and also including vegetables, fruits and nuts; trail mix consisting primarily of processed nuts, seeds, dried fruit and also including chocolate; yogurt; milk; all of the foregoing are sold by Cumberland Farms and EG America owned stores only,” in International Class 29; and
- “Coffee, coffee drinks, tea and iced tea; coffee and tea beverages, namely, tea-based beverages; bottled ready to drink coffee and tea drinks, namely, tea-based drinks; chocolates; candy and chocolate confections; popcorn; donuts, Danish, muffins, pastry, brownies, single serve cookies and bread, rolls, English muffins, bagels, packaged cookies; ice cream; salads, namely, macaroni salad; sandwiches; wrap sandwiches; all of the foregoing are sold by Cumberland Farms and EG America owned stores only,” in International Class 30.²

The 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 used in connection

² Application Serial No. 88897129 was filed on May 1, 2020, 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.

Applicant describes the mark in the application as follows: “The mark consists of the stylized wording ‘FARMHOUSE FRESH TO GO’, with two leaves above the letter ‘E’ in ‘FRESH’ and three stacked horizontal lines before ‘TO GO’.” Color is not claimed as a feature of the mark.

with the goods set out above, so resembles the following seven³ registered marks, as to be likely to cause confusion, to cause mistake, or to deceive:⁴

Registrant	Reg. No.	Mark	Pertinent Goods
Sara Lee Foods, LLC	2625116 ⁵		Processed meats, namely pork, beef, and poultry, all in Class 29
Thrive Farmers International, Inc.	5055508 ⁶	FARMHOUSE	Ground coffee beans; roasted coffee beans, in Class 30
Marinus Cornelis Adrianus Heij	5400317 ⁷		Dietetic ices, not for medical purposes; ices, in particular

³ The Examining Attorney originally also cited an eighth mark—FARMHOUSE DRESSING and Design (Reg. No. 4640106)—in support of the refusal. July 29, 2020 Office Action at TSDR 2, 19-21. However, the registration has since been cancelled, so we give it no further consideration. *See e.g., In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1159 (TTAB 2019) (expired or cancelled registrations generally are evidence only of the fact that the registrations issued); *In re Hartz Hotel Services Inc.*, 102 USPQ2d 1150, 1152 n.5 (TTAB 2012) (Board did not consider four cancelled third-party registrations submitted by applicant).

The Examining Attorney also cited a ninth mark: FARMHOUSE CORNER MARKET mark for “Retail markets featuring food and beverages; Retail grocery stores” in Class 35 (Reg. No. 5966413). However, this mark was withdrawn after Applicant deleted its Class 35 services. October 26, 2021 Denial of Request for Reconsideration.



Page references herein to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions. References to the briefs on appeal refer to the Board’s TTABVUE docket system. The docket entry number appears before the TTABVUE designation, and the page reference(s), if applicable, appear after it.

⁴ July 29, 2020 Office Action at TSDR 2.

⁵ Registration No. 2625116, issued September 24, 2002; renewed. The registration includes the following description of the mark: “The lining is a feature of the mark and does not indicate color.”

⁶ Registration No. 5055508 (in standard characters), issued October 4, 2016.

⁷ Registration No. 5400317, issued February 13, 2018. This registration was filed solely on the basis of Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on EUIPO Registration No. 004622346. Registrant describes the mark as follows: “The mark consists of a white farmhouse with a red roof and blue doors and windows set above a green and yellow-

Registrant	Reg. No.	Mark	Pertinent Goods
			water ices, dairy ice cream, sherbets, sorbets, all in Class 30
Farmhouse Delivery, Inc.	4330073 ⁸	FARMHOUSE DELIVERY	Meat, namely, beef, lamb, poultry, pork, all locally sourced, sold and delivered by Farmhouse Delivery to its subscription members only, in Class 29 Breads, bagels, and rolls, all locally sourced, sold and delivered by Farmhouse Delivery to its subscription members only, in Class 30
Farmhouse Foods, Inc.	1855320 ⁹	FARMHOUSE	Rice and seasoned rice mixes; pasta and seasoned pasta mixes, all in Class 30
	2745639 ¹⁰		Rice and seasoned rice mixes; pasta and seasoned pasta mixes, all in Class 30
	4658523 ¹¹		Dried pasta; rice, all in Class 30

green field with a green hedge and trees behind the farmhouse, there is a yellow outline of the house on the right side and a yellow bar above the green hedge. The words ‘farmhouse ice cream’ are in the color blue above all of the foregoing elements. The color white that appears in the mark other than in the farmhouse is meant to represent background or transparent areas and is not claimed as a feature of the mark.” The colors green, yellow-green, yellow, red, white and blue are claimed as a feature of the mark. The terms ICE CREAM has been disclaimed. This registration also includes services in Class 43, which are not at issue.

⁸ Registration No. 4330073 (in standard characters), issued May 7, 2013; Section 8 declaration accepted. The term DELIVERY has been disclaimed. This registration also contains goods and services in Classes 5, 31, 35 and 39, which are not relevant here.

⁹ Registration No. 1855320 (typed drawing), issued September 20, 1994; twice renewed. A typed drawing is the legal equivalent of a standard character mark. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 807.03(i) (July 2022).

¹⁰ Registration No. 2745639, issued August 5, 2003; renewed. The registration includes the following description of the mark: “The stippling is for shading purposes and does not indicate color.” Color is not claimed as a feature of the mark.

¹¹ Registration No. 4658523, issued December 23, 2014; Section 8 declaration accepted. The registration includes the following description of the mark: “The mark consists of the stylized wording ‘FARMHOUSE’ in a rectangular curved box. Centered below the word

After the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, and the appeal was resumed. The appeal is fully briefed.

We focus our analysis on whether there is a likelihood of confusion between Applicant's mark and two of the cited marks: (1) FARMHOUSE and Design in the name of Sara Lee Foods, LLC ("Sara Lee Registration") for processed meats, and (2) FARMHOUSE in the name of Thrive Farmers International, Inc. ("Thrive Farmers Registration") for coffee beans (each, the "Cited Mark" or "Cited Registration", and collectively, the "Cited Marks" or "Cited Registrations"). *See In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (confining 2(d) analysis to one of two cited marks).

We affirm the refusal to register in each class.

I. Likelihood of Confusion Analysis

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, mistake, or deception. 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, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). We consider each *DuPont* factor that is

'FARMHOUSE' is a design of farmhouse scenery inside an oval box." Color is not claimed as a feature of the mark.

relevant or for which there is evidence and argument of record. *See e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and between the goods or services. *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.”); *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)).

Applicant focuses on the first factor but does not directly address the second. Applicant also addresses the third *DuPont* factor, the “similarity or dissimilarity of established, likely-to-continue trade channels,” *DuPont*, 177 USPQ at 567, and the sixth, the “number and nature of similar marks in use on similar goods,” *DuPont*, 177 USPQ at 567.

A. Number and Nature of Similar Marks

The sixth *DuPont* factor “considers ‘[t]he number and nature of similar marks in use on similar goods.’” *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at

567). Third-party registrations and third-party use of similar marks can bear on the strength or weakness of registered marks in two ways—conceptually and commercially. They can:

show that a term “may have a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that [term] is relatively weak,” and “can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.”

Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC, 122 USPQ2d 1030, 1036 (TTAB 2016) (quoting *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) and *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)).

In its brief, Applicant argues that “no consideration was given to the ... substantial evidence made of record by Applicant, including numerous third-party registrations and use that demonstrate that the term FARMHOUSE [is] commonly used in connection with food and beverage products and services”¹² and that this evidence is “clearly indicative of peaceful co-existence of FARMHOUSE formative marks in the food and beverage field”.¹³ We consider Applicant’s evidence in turn.

¹² Applicant’s Brief (15 TTABVUE 8).

¹³ Applicant’s Reply Brief (18 TTABVUE 8).

1. Commercial Strength

Applicant made of record webpage printouts showing actual use of seven FARMHOUSE-formative marks:¹⁴

- JAN’S FARMHOUSE crackers (<https://jansfarmhouse.com>);¹⁵
- GLENDA’S FARMHOUSE pecans, walnuts, cashews and almonds (glendasfarmhouse.com);¹⁶
- FARMHOUSE MARKET local and organic food store (farmhousemarketnp.com);¹⁷
- FARMHOUSE MARKET grocery store and catering services (farmhousemarket-lakeburton.com);¹⁸
- FARMHOUSE MARKET grocery store (farmhousemarket.com);¹⁹
- URBAN FARMHOUSE market and café (theurbanfarmhouse.net);²⁰ and
- FARMHOUSE GREENS restaurant and catering (farmhousegreens.com).²¹

Applicant argues that these third-party marks “are clearly indicative of peaceful co-existence of FARMHOUSE formative marks in the food and beverage field, regardless of additional distinctive or indistinctive matter.”²²

¹⁴ Exhibit F attached the January 26, 2021 Response to Office Action at TSDR 23-27, and 86-192.

¹⁵ *Id.* at TSDR 107-11.

¹⁶ *Id.* at TSDR 112-15.

¹⁷ *Id.* at TSDR 162-67.

¹⁸ *Id.* at TSDR 168-74.

¹⁹ *Id.* at TSDR 175.

²⁰ *Id.* at TSDR 176-77.

²¹ *Id.* at TSDR 184-87.

²² Applicant’s Reply Brief (18 TTABVUE 8).

The Examining Attorney argues that “the Internet evidence showing use of the wording ‘farmhouse’ all involve marks that include other dominant wording or design elements and/or are used in relation to different goods.”²³ Consequently, the Examiner argues, this evidence has little probative value.

In response, Applicant argues that “it is undeniable that each of the ... [marks shown in the] evidence of use contain the word FARMHOUSE and comprise food and/or beverage goods.”²⁴

However, Applicant offers no evidence that any of the aforementioned goods or services are related to the goods identified in the Cited Registrations and makes only conclusory arguments that presume that all goods and services “in the food and beverage field” are related to each other. As explained above, the applicable *DuPont* factor is the “number and nature of similar marks on **similar** goods.” *DuPont*, 177 USPQ at 567 (emphasis added). *See also Omaha Steaks*, 128 USPQ2d at 1694 (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”).

The meaning of “similar goods” does not extend to any and all food and beverage products, so these third-party uses do not establish that the term FARMHOUSE is weak. *See Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171–72 (TTAB 1987) (“There is no question but that applicant’s beef snacks and opposer’s fruit juices could very well be found in grocery stores, convenience stores,

²³ Examining Attorney’s Brief (17 TTABVUE 16-17).

²⁴ Applicant’s Reply Brief (18 TTABVUE 5).

supermarkets and the like. However, notwithstanding these common trade channels, it has often been stated that there can be no ‘per se’ rule that all food products are related goods by nature or by virtue of their capability of being sold in the same food markets”).

Further, we agree with the Examining Attorney that several of the third-party uses are of FARMHOUSE-formative marks that contain dominant terms other than FARMHOUSE, such as JAN’S FARMHOUSE, GLENDA’S FARMHOUSE and URBAN FARMHOUSE. We find that these marks make sufficiently different commercial impressions that they are not relevant to this issue.

Even assuming that all of the third-party FARMHOUSE-formative marks are relevant to the issue, seven third-party uses “is a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant in both *Jack Wolfskin* and *Juice Generation*.” *Sabhnani v. Mirage Brands*, 2021 USPQ2d 1241, *25-26 (TTAB 2021) (quoting *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d*, 777 Fed. Appx. 516 (Fed. Cir. 2019)) (finding that Respondent’s evidence of one third-party use and six third-party registrations “of varying value” to be insignificant). *See, e.g., Jack Wolfskin*, 116 USPQ2d at 1136 n.2 (“the evidence demonstrated the ubiquitous use” of paw print marks that showed the weakness of that design element in the opposer’s mark); *Juice Generation*, 115 USPQ at 1673 n.1 (approximately 26 third-party registrations and uses of marks containing the words “Peace” and “Love” showed the weakness of those words in the opposer’s marks); *Inn at St. John’s*, 126 USPQ2d at 1746 (four third-party

registrations and no third-party uses were “a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant” in *Jack Wolfskin* and *Juice Generation*).

Based on the entirety of the record, we find that Applicant’s evidence of record is insufficient to show that the FARMHOUSE element is commercially weak.

2. Conceptual Strength of the FARMHOUSE Element

Applicant argues that the FARMHOUSE term is “highly suggestive” of food and beverages.²⁵ Applicant argues that it is not surprising that sellers of food and beverage products frequently use this term, given its connotations of wholesomeness, comfort, and simplicity—all desirable characteristics for the food we eat and beverages we drink.²⁶ Applicant offers three types of evidence to support its position, which we discuss in turn.

a. Dictionary Evidence

First, Applicant made of record a definition from the MERRIAM-WEBSTER DICTIONARY that defines “farmhouse” as “a dwelling on a farm.”²⁷ Applicant argues that other, related “farm” formative terms, such as “farm fresh,” are also commonly used in the food industry to advertise food and beverage products because these terms suggest that the food is “very fresh or fresh-tasting, (as if) coming straight from the farm.”²⁸ Applicant argues that in the context of food and drinks, “the definition of

²⁵ Applicant’s Brief (15 TTABVUE 10); Applicant’s Reply Brief (18 TTABVUE 5, 8).

²⁶ Applicant’s Brief (15 TTABVUE 10).

²⁷ Exhibit D to the January 26, 2021 Response to Office Action at TSDR 73.

²⁸ Applicant’s Brief (15 TTABVUE 10) (quotation omitted).

FARMHOUSE is clearly suggestive of desirable qualities and characteristics such as freshness and wholesomeness.”²⁹

The Examining Attorney agrees that the term farmhouse means dwelling but, in contrast, concludes that the term is arbitrary³⁰ as “[it] has no descriptive significance in relation to the foods at issue, or any foods, for that matter.”³¹ In response, Applicant argues that the Examining Attorney’s conclusion that the term is arbitrary is “unfounded.”³²

b. USPTO Trademark Electronic Search System (TESS) Search Results

Second, Applicant made of record the results from a TESS search,³³ which Applicant argues constitutes evidence of “85 live trademark applications and/or registrations on the Register that include the word FARMHOUSE in connection with goods and services in pertinent classes [Classes 29, 30, 31, or 35].”³⁴ During prosecution, the Examining Attorney objected to Applicant’s evidence, informed Applicant that its submission of a list of hits did not make the registrations of record, and then advised Applicant as to the necessary steps to make the registrations of

²⁹ *Id.*

³⁰ Examining Attorney’s Brief (17 TTABVUE 10).

³¹ *Id.* (17 TTABVUE 16).

³² Applicant’s Reply Brief (18 TTABVUE 4).

³³ Exhibit E to the January 26, 2021 Response to Office Action at TSDR 82-85.

³⁴ Applicant’s Brief (15 TTABVUE 12). *See* January 26, 2021 Response to Office Action at TSDR 22-23.

record.³⁵ Applicant did not follow-up with evidence in the proper form during the prosecution stage.

Despite the Examining Attorney's objection, Applicant relies on the TESS search report evidence in its original form in its brief.³⁶ The Examining Attorney did not maintain his objection to this evidence, or even address it at all.³⁷ *Cf. In re I-Coat Co., LLC*, 126 USPQ2d 1730 (TTAB 2018) (Examining Attorney should continue the objection to the evidence in his appeal brief). Therefore, we consider the evidence for whatever probative value it may have and do not consider more than the information provided by Applicant. *In re 1st USA Realty Professionals Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007) (Board treated listing of particulars of third-party applications/registrations submitted by applicant as stipulated into record only to the extent that the specific data was provided by applicant); *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1513 n.3 (TTAB 2001) (listing of registration information considered for whatever probative value it might have).

Applicant's evidence consists of TESS search results for "live" applications or registrations for marks containing the term "farmhouse" for use with goods or services falling into Classes 29, 30, 31 or 35.³⁸ The search results show the literal elements of each mark that meets the search criteria, its serial/registration number,

³⁵ March 2, 2021 Office Action at TSDR 13.

³⁶ Applicant's Brief (15 TTABVUE 12).

³⁷ Examining Attorney's Brief (17 TTABVUE).

³⁸ Exhibit E to the January 26, 2021 Response to the Office Action at TSDR 82-85.

and its “live” status.³⁹ However, the search results do not identify the goods or services in each application or registration.

It is true that the “hits” fall into one or more of the classes 29, 30, 31, or 35; however, classification is merely an administrative act and is irrelevant to the issue of relatedness. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (citing *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993)). Furthermore, a mere listing of third-party marks, without any accompanying indication of the goods or services associated therewith, has little, if any, probative value. TBMP § 1208.02 (and cases cited therein). In addition, to the extent that the “hits” are applications, not registrations, the applications are only evidence that they have been filed, *Interpayment Servs. Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n. 6 (TTAB 2003), and are thus not relevant.

Accordingly, we find that Applicant’s evidence consisting of TESS search results is not probative on the issue of the strength or weakness of the FARMHOUSE element and give it no further consideration.

c. Third-Party Registrations

Third, during prosecution, Applicant filed a response to an Office Action that both (i) listed details of 25 third-party registrations for FARMHOUSE-formative marks,⁴⁰ and (ii) attached as an exhibit copies of the corresponding certificates of registration, nine of which are the registrations forming the basis of the refusal (including the now-

³⁹ *Id.*

⁴⁰ January 26, 2021 Response to Office Action at TSDR 23-26.

cancelled registration for FARMHOUSE DRESSING and Design and the withdrawn registration for FARMHOUSE CORNER MARKET).⁴¹ The Examining Attorney objected to the registration evidence in the form of the list embedded in Applicant's response as it was not sufficient to make the registrations of record, but did not address the photocopies of the certificates, which also were not sufficient to make the registrations of record because the exhibit did not contain each registration's current status and title information.⁴² In response, Applicant re-submitted the copies of the certificates of registration in identical form,⁴³ again without any current status or title information. Subsequently, the Examining Attorney addressed the marks on the merits without objection;⁴⁴ we, therefore, consider the record on appeal to include the copies of the 25 certificates of registration for FARMHOUSE-formative marks.⁴⁵

⁴¹ Exhibit F to the January 26, 2021 Response to the Office Action at TSDR 86-192.

⁴² March 2, 2021 Office Action at TSDR 13.

⁴³ Exhibit H to the September 1, 2021 Request for Reconsideration ("Req. Recon.") at TSDR 47-152.

⁴⁴ October 26, 2021 Denial of Req. Recon. at TSDR 9.

⁴⁵ To the extent that Applicant argues that the 25 third-party marks are presently in use in commerce and "co-existing" (Applicant's Brief (15 TTABVUE 12)), we find the registration evidence alone unpersuasive on this point. It is well-settled that certificates of registration by themselves have little evidentiary value on the question of commercial weakness, as the probative value of third-party marks depends entirely on their usage. *In re Embiid*, 2021 USPQ2d 577, *34 (TTAB 2021); see *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005). It is true that Applicant made of record specimens for at least some of the registered marks. January 26, 2021 Response to Office Action at TSDR 86-192. However, specimens from third-party registration files are not evidence that the subject marks are currently in use. See e.g., *Allied Mills, Inc. v. Kal Kan Foods, Inc.*, 203 USPQ 390, 397 n.11 (TTAB 1979).

Applicant argues that the 25 third-party registrations support its position that the FARMHOUSE element is conceptually weak.⁴⁶ The Examining Attorney disagrees, arguing that the registrations have no probative value because they (i) cover marks that are too dissimilar to be relevant, and (ii) identify unrelated goods.⁴⁷ Applicant complains that the Examining Attorney “fails however to identify or explain any specific mark or registration that he claims is distinguishable based on dominant wording or design, how the mark/registration is used with different goods, or how the preceding claims would in fact limit the probative value of Applicant’s evidence.”⁴⁸

We agree with the Examining Attorney in part and find that the following marks differ significantly in terms of sight, sound, meaning and commercial impression so as to be too dissimilar for consideration: AMERICAN FARMHOUSE;⁴⁹ PEPPERIDGE FARM FARMHOUSE;⁵⁰ CITY FARMHOUSE;⁵¹ and DOROTHY’S FARM HOUSE.⁵² In each of these cases, a term other than FARMHOUSE is the predominant term. Consequently these four marks are not relevant to the issue of conceptual weakness.

⁴⁶ Applicant’s Brief (15 TTABVUE 11).

⁴⁷ Examining Attorney’s Brief (17 TTABVUE 16).

⁴⁸ Applicant’s Reply Brief (18 TTABVUE 5).

⁴⁹ January 26, 2021 Response to Office Action at TSDR 118.

⁵⁰ *Id.* at TSDR 135.

⁵¹ *Id.* at TSDR 178.

⁵² *Id.* at TSDR 188.

Considering the remaining third-party registrations, we find that there is no evidence of record to show that some of the goods or services identified in them are related to goods identified in the Cited Registrations. This includes, for example, macaroons;⁵³ pickled vegetables;⁵⁴ cheese;⁵⁵ pizza;⁵⁶ and veggie burgers.⁵⁷ *Hi-Country Foods*, 4 USPQ2d at 1171-72 (“no ‘per se’ rule that all food products are related goods by nature or by virtue of their capability of being sold in the same food markets”).

However, we agree with Applicant that some of the marks shown in the third-party registrations are indeed relevant to the issue of the strength of the FARMHOUSE element, as summarized below:

Registered Mark/ Disclaimer (if any)/ Reg. No.	Pertinent Goods	Registrant	Similar Goods Analysis
FARMHOUSE MELT ⁵⁸ (disclaimer of MELT) Supp. Reg. No. 4,654,541	Sandwiches, in Class 30	Cheeseboy Properties LLC	We take judicial notice of the fact that sandwich means “two or more slices of bread or a split roll having a filling in between.” ⁵⁹ One such filling can be processed meat, such as chicken. Therefore, we find that “sandwiches” are closely related to “processed

⁵³ *Id.* at TSDR 102.

⁵⁴ *Id.* at TSDR 104.

⁵⁵ *Id.* at TSDR 116.

⁵⁶ *Id.* at TSDR 128.

⁵⁷ *Id.* at TSDR 130.

⁵⁸ *Id.* at TSDR 97-98.

⁵⁹ MERRIAM-WEBSTER DICTIONARY at merriam-webster.com, accessed on August 22, 2022. 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).

Registered Mark/ Disclaimer (if any)/ Reg. No.	Pertinent Goods	Registrant	Similar Goods Analysis
			meats” identified in the Sara Lee Registration.
FARMHOUSE CHICKEN ⁶⁰ (disclaimer of CHICKEN) Principal Reg. No. 5,210,751	Chicken for consumption on or off the premises, in Class 29	Aramark Services, Inc.	We find that “chicken for consumption on or off the premises” overlaps with “processed meats, namely ... poultry” identified in the Sara Lee Registration.
FARMHOUSE FEAST ⁶¹ Principal Reg. No. 3,551,136	Prepared carry-out meals, including but not limited to holiday meals, primarily consisting of turkey, ham, beef, chicken or pork served with or without various side dishes in Class 29	Bob Evans Restaurant of Michigan, Inc.	We find that “prepared meals featuring meat” overlap with “processed meats, namely ... poultry” identified in the Sara Lee Registration.
FARMHOUSE DELIVERY ⁶² (Disclaimer of DELIVERY) Principal Reg. No. 4,330,073	Meat, namely, beef, lamb, poultry, pork, all locally sourced, sold and delivered by Farmhouse Delivery to its subscription	Farmhouse Delivery, Inc.	We find that the meat products identified in Class 29 are legally identical to the meat products identified the Sara Lee Registration. Also, we find that the bread products in Class 30 are related to the coffee products in the Thrive Farmers Registration as

⁶⁰ *Id.* at TSDR 99-101.

⁶¹ *Id.* at TSDR 124-25.

⁶² *Id.* at TSDR 138-54.

Registered Mark/ Disclaimer (if any)/ Reg. No.	Pertinent Goods	Registrant	Similar Goods Analysis
	members only, in Class 29 Breads, bagels, and rolls, all locally sourced, sold and delivered by Farmhouse Delivery to its subscription members only, in Class 30		shown by the third-party website evidence that Panera Bread and Stonewall Kitchen sell both products under the same mark. ⁶³
FARMHOUSE and two FARMHOUSE and Design ⁶⁴ marks Principal Reg. Nos. 1,855,320, 2,745,639, 4,658,523	Rice and seasoned rice mixes; pasta and seasoned pasta mixes, all in Class 30	Farmhouse Foods, Inc.	Third-party website evidence shows pasta and rice mixes and the goods of the Sara Lee and Thrive Farmers Registrations offered together, causing the goods to be related. ⁶⁵

Notably, the FARMHOUSE MELT mark is registered on the Supplemental Register, with a disclaimer of MELT. Registration on the Supplemental Register is evidence that the mark is conceptually weak. *In re Future Ads LLC*, 103 USPQ2d

⁶³ October 26, 2021 Denial of the Req. Recon. at TSDR 29-43, 53-56.

⁶⁴ January 26, 2021 Response to Office Action at TSDR 87-93; July 29, 2020 Office Action at 18, 22-24, 32-34.

⁶⁵ October 26, 2021 Denial of the Req. for Recon. at TSDR 26, 53-56.

1571, 1574 (TTAB 2012) (“Registration on the Supplemental Register is prima facie evidence that, at least at the time of registration, the registered mark was merely descriptive.”).

Referring back to the dictionary definition, of course, none of the goods are literally “from a farmhouse;”⁶⁶ however, we find that the third-party registrations, taken together with the dictionary definition of “farmhouse,” support a finding that FARMHOUSE has a highly suggestive meaning because it underscores a quality of the goods for which the marks are registered—fresh, i.e., straight from the farm—and therefore the FARMHOUSE element of the Cited Registrations has some inherent weakness.

Despite the element’s highly suggestive nature, because the marks of the Cited Registrations are registered on the Principal Register without any claim of acquired distinctiveness, the marks are entitled to the presumptions accorded by Trademark Act Section 7(b), 15 U.S.C. § 1057(b). Further, even if the FARMHOUSE element of the Cited Registrations is inherently weak, that is not fatal to a finding of likelihood of confusion because even weak marks are entitled to protection against confusion. *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974).

⁶⁶ January 26, 2021 Response to Office Action at TSDR 34.

B. Similarity or Dissimilarity and Nature of the Goods and Channels of Trade and classes of consumers

We turn next to the second and third *DuPont* factors considering the relatedness of the goods, channels of trade, and classes of consumers, focusing, as we must, on the goods as they are identified in the involved application and the Cited Registrations. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014) (goods as identified in involved application and cited registration compared); *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

1. Similarity or Dissimilarity and Nature of the Goods

Applicant seeks registration of its mark for, in part, “ready-to-eat meals comprised primarily of meats” in Class 29, and “coffee” in Class 30. The Sara Lee Registration identifies, in part, “processed meats, namely pork, beef, and poultry” in Class 29, while the Thrive Farmers Registration identifies “ground coffee beans; roasted coffee beans” in Class 30.

The goods or services do not have to be identical or even competitive to find a likelihood of confusion. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *5 (TTAB 2020) (citing *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010)); *In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1368 (TTAB 2009). The issue is not whether the goods or services will be confused with each other, but rather whether consumers would be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be

related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.”).

The Examining Attorney made of record evidence to support its position that the Applicant’s goods are related to the goods identified in the Cited Registrations. Applicant does not dispute this evidence, or even address the issue in its briefs,⁶⁷ thus “[a]pparently conceding the issue,” *In re Morinaga Nyugyo K. K.*, 120 USPQ2d 1738, 1740 (TTAB 2016), “so we offer only a brief explanation of our conclusion.” *Id.*

When considering the evidence of record, we note that it is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any item of identified goods within that class in the application or cited registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

a. Class 29 Goods

The Examining Attorney made of record copies of use-based third-party registrations, each identifying both Sara Lee Registration goods (processed meats, namely pork, beef, and poultry) and Applicant’s goods (ready-to-eat meals comprised primarily of meats), including: DIRTY SOUTH BBQ CO. and Design (Reg. No. 6269785); SCHNUCKS SINCE 1939 (Reg. No. 5764178); ASSI and Design (Reg. No.

⁶⁷ Applicant’s Brief (15 TTABVUE); Applicant’s Reply Brief (18 TTABVUE). We note that Applicant argued that its “goods/services are not sufficiently related to [the Sara Lee Registration] goods/services [because] Applicant’s goods, as amended above, consists of a variety of foods and beverages that are, in pertinent part, *sold by Cumberland Farms and EG America stores only.*” September 1, 2021 Req. Recon. at TSDR 22. However, this argument is relevant to the channels of trade factor, and does not impact our analysis of the relatedness of the goods.

5795066); Face design (Reg. No. 5795067); and LABRIUTE (Reg. No. 5696016).⁶⁸ Additionally, the Examining Attorney made of record evidence from third-party websites, all of which show processed meats and ready-to-eat meals offered for sale under the same mark, such as bobevans.com, thrivemarket.com, and zingermans.com.⁶⁹ Consequently, we find that Applicant's goods and the goods of the Sara Lee Registration are related for purposes of likelihood of confusion.

b. Class 30

Turning to Class 30, Applicant's identification is broadly described as "coffee". "Coffee" has several meanings, including "coffee seeds especially roasted and often ground."⁷⁰ "Coffee beans" is defined as "dried or roasted seed of a tropical plant from which coffee is prepared".⁷¹ Consequently, Applicant's "coffee" is broad enough to encompass "coffee beans" of all types, including both "ground coffee beans" and "roasted coffee beans," both of which are identified in the Cited Registration. Thus, we find that the goods to be legally identical.⁷²

⁶⁸ March 2, 2021 Office Action at TSDR at 314-17, 216-19, 220-24, 225-29, and 251-52.

⁶⁹ October 26, 2021 Denial of Req. Recon. at TSDR 11-16, 86-92, 127-37.

⁷⁰ MERRIAM-WEBSTER DICTIONARY, merriam-webster.com, accessed on August 29, 2022. *Cordua Rests.*, 110 USPQ2d at 1229 n.4 (Board may take judicial notice of dictionary definitions).

⁷¹ MERRIAM-WEBSTER DICTIONARY, merriam-webster.com, accessed on August 29, 2022. *Cordua Rests.*, 110 USPQ2d at 1229 n.4.

⁷² The Examining Attorney showed persuasively that "coffee" identified in subject application was related to the "ground coffee beans; roasted coffee beans" of the Cited Registration; however, in light of our finding that the aforementioned goods are legally identical, we need not discuss the Examining Attorney's evidence here.

In sum, we find that Applicant's goods in Class 29 to be related to those identified in the Sara Lee Registration, and Applicant's goods in Class 30 to be legally identical to those identified in the Thrive Farmers Registration. Thus, this factor weighs in favor of a likelihood of confusion.

2. The Established Likely-to-Continue Channels of Trade and Classes of Consumers

The third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *Detroit Athletic*, 128 USPQ2d at 1052 (quoting *DuPont*, 177 USPQ at 567). “The third *DuPont* factor—like the second factor—must be evaluated with an eye toward the channels specified in the application and registration, not those as they exist in the real world.” *Id.*

Applicant limited its identification of goods in both classes to “all of the foregoing are sold by Cumberland Farms and EG America owned stores only.” In its brief, Applicant argues that the limitation to its channels of trade eliminates any likelihood of confusion; however, Applicant's argument addressed only one registration forming the basis of the refusal—the FARMHOUSE DELIVERY registered mark⁷³ – which is not one of the registrations that we focus on here.

Because Applicant does not make any other arguments or otherwise dispute that its limitation to its channels of trade eliminates confusion with respect the Cited Registrations, Applicant appears to have conceded the issue as to these two

⁷³ Applicant's Brief (15 TTABVUE 15).

registrations. *Morinaga Nyugyo*, 120 USPQ2d at 1740. Therefore, as before, we give a brief summary of our finding.

With regard to the Class 29 goods, because we find the Applicant's goods to be related to those of the Cited Registration, in the absence of any limitations in the Cited Registration, we must presume that the goods identified in the Cited Registration move in all normal channels of trade, and are available to all classes of customers, for such goods. *See, e.g., In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009).

With regard to the Class 30 goods, because we find Applicant's goods to be legally identical to those of the Cited Registration, we must presume that these goods travel through the same channels of trade and are offered or rendered to the same or overlapping classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion).

We find that the classes of consumers for processed meats and coffee products is the general public.

Here, each of the Cited Registrations has a broad identification of goods with no restriction to its channels of trade. Applicant does not avoid likelihood of confusion merely by more narrowly identifying its channel of trade. *See, e.g., In re i.am.symbolic, llc*, 123 USPQ2d at 1750-52; *In re Diet Ctr., Inc.*, 4 USPQ2d 1975 (TTAB 1987) (noting that, although applicant had limited its identification to indicate that its goods were sold only through franchised outlets offering weight-reduction

services, the cited registration's identification contained no limitations as to trade channels or classes of customers and thus it must be presumed that registrant's goods travel through all the ordinary channels of trade). That is, a limitation of Applicant's channels of trade in its recitation of goods cannot overcome a Section 2(d) refusal unless the goods in the Cited Registrations are restricted in such a way that the respective trade channels cannot overlap, which is not the case here. *Diet Ctr*, 4 USPQ2d at 1976.

Thus, the second and third *DuPont* factors support a finding of a likelihood of confusion.

C. Similarity or Dissimilarity of the Marks

We next consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Stone Lion Capital*, 110 USPQ2d at 1160; *DuPont*, 177 USPQ at 567. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *Inn at St. John's*, 126 USPQ2d at 1746 (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The issue 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, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *In re FabFitFun, Inc.*, 127 USPQ2d 1670,



1675 (TTAB 2018). As noted in the previous section, the average purchaser is the general public or ordinary consumers.

Further, we do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1160. It is not improper, however, to give more weight to a dominant feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1161.

In comparing the marks, we keep in mind the inherent weakness of the FARMHOUSE element of the Cited Marks.

Applicant argues that its mark and the Cited Marks are similar only to the extent that they each contain the literal term FARMHOUSE, a highly suggestive term, and that its mark is otherwise wholly different visually, aurally and in commercial impression and connotation.⁷⁴

Referring specifically to the mark in the Sara Lee Registration, Applicant argues

that its mark  and the Sara Lee mark  are not likely to be confused:

[The Sara Lee mark] comprises a design featuring a farm and farmhouse scene, bordered by two concentric circles that are totally or partially shaded, and conveys entirely different design elements from Applicant's Mark, as detailed above. Additionally, the only wording in this [Sara Lee] Mark is "farm" and "house", displayed in a unique font as two words. Applicant's Mark, on the other hand, comprises three words in total and displays the common element "farmhouse" as one word. Applicant's Mark

⁷⁴ Applicant's Brief (15 TTABVUE 13).

and this Cited Mark also differ in sound and [phonetics] Applicant's Mark has a total of 5 syllables and a longer pronunciation when compared to the Cited Mark with [] 2 syllables.⁷⁵

Turning to the Thrive Farmers FARMHOUSE mark, which we note is registered in standard character format, Applicant argues "FARMHOUSE, Reg. No. 5055508 [is] also significantly different in appearance, sound, and commercial impression when compared to Applicant's Mark[]"⁷⁶ and that "[v]isually, [this] Cited Mark comprise[s] no design elements."⁷⁷

For the most part, the Examining Attorney makes arguments addressing all of the marks forming the basis of the refusal. Specifically, the Examining Attorney argues that although the marks must be compared in their entireties, the word portion of Applicant's mark is physically larger than the design portion of the mark of the Sara Lee Registration (which consists of two leaves and three horizontal lines to indicate motion) and is likely to be impressed upon a purchaser's memory and used when requesting the goods, therefore "the wording in the applicant's mark" forms the dominant feature of Applicant's mark.⁷⁸ The Examining Attorney also argues that consumers are generally more inclined to focus on the first word of a mark, which in Applicant's mark is the term FARMHOUSE; importantly, the FARMHOUSE/FARMHOUSE element is the only literal element in the two Cited Marks.⁷⁹ Continuing, the

⁷⁵ *Id.* at 13-14.

⁷⁶ *Id.* at 14.

⁷⁷ *Id.*

⁷⁸ Examining Attorney's brief (17 TTABVUE 7).

⁷⁹ *Id.* at 8-10.

Examining Attorney argues that the use of a space or not between the terms FARM and HOUSE is not enough to differentiate the marks.⁸⁰ The Examining Attorney also argues that the FARMHOUSE term is arbitrary when applied to the goods/services identified in the involved application and the cited registrations; thus any meaning or connotation that consumers may attribute to the term would likely be the same.⁸¹

With respect to Applicant's mark, we find that the dominant element is the term FARMHOUSE because it appears first. *Detroit Athletic Co.*, 128 USPQ2d at 1049) (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"); *Palm Bay Imps.*, 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered").

In addition, the term "FARM HOUSE" in Applicant's mark is followed by the disclaimed and generic wording "FRESH" and "TO GO". *Detroit Athletic Co.*, 128 USPQ2d at 1050 (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

⁸⁰ *Id.* at 10.

⁸¹ *Id.*

conclusion on likelihood of confusion.”) (quotations omitted). This is true despite the fact that the term FRESH appears in a larger font size compared to the FARMHOUSE element. Applicant does not dispute this point in its brief, or argue that the term FRESH is dominant.

Further, as for the mark covered by the Sara Lee Registration, we find that the dominant element of the mark is the literal FARMHOUSE element. *See, e.g., Viterra*, 101 USPQ2d at 19-0-11 (If a mark comprises both wording and a design, greater weight is often given to the wording, because it is the wording that purchasers would use to refer to or request the goods or services.).

Further, we find that the appearance of the term FARMHOUSE as one word in Applicant’s mark and as two words in the Sara Lee Registration is insignificant. FARMHOUSE and FARM HOUSE are phonetically identical and visually similar. The presence or absence of a space between two terms is an inconsequential difference that, even if noticed by consumers, would not serve to distinguish the marks. *See In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010) (finding ACTIVECARE and ACTIVE CARE confusingly similar). The commercial impression or connotation created by Applicant’s mark is the same as that engendered by the mark of the Sara Lee Registration due to shared dominant element and their use on related goods.

Next, comparing Applicant’s mark to the FARMHOUSE mark registered by Thrive Farmers, we find that the predominant term of Applicant’s mark and the entirety of Thrive Farmers’ mark are identical. As they are used on legally identical

goods, the FARMHOUSE term engenders the same connotation and commercial impression.

Applicant's arguments that its mark is dissimilar from the Cited Marks based on the number of syllables in each mark are unpersuasive, as we must consider each mark's commercial impression.⁸² *See In re John Scarne Games, Inc.*, 120 USPQ 315, 315-16 (TTAB 1959) ("Purchasers of game boards do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both.").

Applicant also argues that it is a well-known family of convenience stores that commonly and prominently pairs its CUMBERLAND FARMS house mark with its FARMHOUSE marks on a wide variety of food and beverage goods,⁸³ that Applicant's mark is also commonly used in close proximity to the Applicant's house mark,⁸⁴ and that, as a result, Applicant's mark as a whole, will make a distinct commercial impression different from the Cited Marks.⁸⁵

We do not find Applicant's arguments persuasive. Applicant's drawing page shows only its mark and does not include its house mark. We are concerned with Applicant's mark as displayed in its application drawing, not as displayed in the marketplace or with any accompanying trade dress, *cf.* Trademark Rule 2.52, 37 C.F.R. § 2.52 ("A drawing depicts the mark sought to be registered."), and therefore it is inappropriate

⁸² Applicant's Brief (15 TTABVUE 13-14).

⁸³ Applicant's Reply Brief (18 TTABVUE 9-10).

⁸⁴ September 1, 2021 Req. Recon. at TSDR 15-16.

⁸⁵ *Id.* at TSDR 17.

to consider Applicant's potential actual use to limit the way in which the mark as registered could be used. *See In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984) (the addition of a house mark on the product/label is not relevant to the comparison of the marks if the house mark is not on drawing).

Additionally, Applicant argues that it has "widely used FARMHOUSE marks for nearly a decade and owns numerous registrations for such marks[,]"⁸⁶ including, for example, CUMBERLAND FARMS FARMHOUSE BLEND COFFEE, CUMBERLAND FARMS FARMHOUSE BAKERY, CUMBERLAND FARMS FARMHOUSE CREAMERY, CUMBERLAND FARMS FARMHOUSE BAKERY ULTIMATE WHOOPIE COOKIE, and CUMBERLAND FARMS FARMHOUSE.⁸⁷ While it is true that these marks incorporate the FARMHOUSE element, the FARMHOUSE term is not the predominant term. Rather, CUMBERLAND FARMS is the predominant term, rendering the CUMBERLAND-FARMS-formative marks dissimilar. Consequently, we find that Applicant's prior registered marks are not sufficiently similar to be probative.

In sum, we find that the first *DuPont* factor weighs in favor of likelihood of confusion.

II. Conclusion

The first, second, and third *DuPont* factors support a finding of a likelihood of confusion. The goods in Class 29 are related to those of one of the Cited Registrations,

⁸⁶ Applicant's Reply Brief (18 TTABVUE 9-10).

⁸⁷ January 26, 2021 Response to Office Action at TSDR 19-20 and Exhibit B (at TSDR 36-58) attached thereto.

and the goods in Class 30 are legally identical to the goods of the other Cited Registration. Applicant's limitation to its channels of trade does not avoid a likelihood of confusion, where the Cited Registrations do not contain a limitation to their channels of trade. Applicant's mark contains the predominant term FARMHOUSE, which is nearly identical to the literal element of the mark of one Cited Registration and identical in its entirety to the mark of the other Cited Registration. As the FARMHOUSE term is used on both related and legally identical goods, it engenders the same connotation and commercial impression. Although the FARMHOUSE element is inherently weak, we find, on the basis of the record as a whole, confusion with the Cited Marks is likely.

III. Decision

The refusal to register Applicant's mark is affirmed as to all classes.