

This Opinion is not a  
Precedent of the TTAB

Hearing: December 8, 2022

Mailed: March 22, 2023

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

*In re Panini America, Inc.*

Serial No. 90004362

Norman H. Zivin of Wolf, Greenfield & Sacks, P.C.  
for Panini America, Inc.

Christina L. Martin, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

Before Cataldo, Adlin and Johnson,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Panini America, Inc., filed an application to register on the Principal Register the mark KABOOM! (in standard characters) identifying “Collectible sports trading cards; Sports trading cards” in International Class 16.<sup>1</sup>

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<sup>1</sup> Application Serial No. 90004362 was filed on June 16, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), asserting August 26, 2013 as the date of first use of the mark anywhere and in commerce.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the following cited registered marks, owned by different entities:

KABOOM! (in standard characters) identifying "Comic books; magazines featuring printed stories in illustrated form and comic book stories and artwork, namely, comic magazines; printed periodicals in the nature of magazines in the field of comic book stories and artwork; series of comic book style novels; series of non-fiction books in the field of comic books" in International Class 16;<sup>2</sup> and



("COMICS & COLLECTIBLES" disclaimed) identifying "Retail store services featuring comic books" in International Class 35.<sup>3</sup>

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board.<sup>4</sup> Applicant and the Examining Attorney submitted briefs and

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<sup>2</sup> Reg. No. 5208178 issued on the Principal Register on May 23, 2017. This registration is owned by Boom Entertainment, Inc., dba BOOM! Studios.

<sup>3</sup> Reg. No. 5072561 issued on the Principal Register on November 1, 2016 with the following description of the mark and color claim: "The mark consists of stylized 'KABOOM!' letters with 2 cartoon bomb characters for the two 'O' letters. There is a starburst explosion in the background. The words 'Comics & Collectibles' appears below." "Color is not claimed as a feature of the mark." This registration is owned by Son of Primus LLC.

<sup>4</sup> All citations to documents contained in the Trademark Status & Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are

presented arguments at oral hearing. We affirm the refusal to register as discussed below.

### **I. Evidentiary Matter**

Applicant submitted an evidentiary exhibit to its appeal brief.<sup>5</sup> To the extent this exhibit is duplicative of evidence previously submitted during prosecution, we need not and do not give this redundant evidence any consideration. Further, any of the evidence submitted with Applicant's appeal brief that was not previously submitted during prosecution is untimely and will not be considered.<sup>6</sup>

### **II. Likelihood of Confusion**

We base our determination of likelihood of confusion under Trademark Act Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors enunciated in *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, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015); see also *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019).

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the page references, if applicable. See, e.g., *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, \*2 n.1 (TTAB 2020).

<sup>5</sup> 8 TTABVUE 12-13.

<sup>6</sup> The proper procedure for an applicant or examining attorney to introduce evidence after an appeal has been filed is to submit a written request with the Board to suspend the appeal and remand the application for further examination. See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). See also TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.02 (June 2022) and authorities cited therein.

We have considered each *DuPont* factor that is relevant, and have treated other factors as neutral. *See 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) (“Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.”)); *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.”).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Two key considerations are the similarities between the marks and the relatedness of the goods and services. *See 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.”); *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1672 (TTAB 2018).

**A. Focus on Reg. No. 5208178<sup>7</sup>**

For purposes of our likelihood of confusion analysis, we will focus on the mark KABOOM! identifying “Comic books; magazines featuring printed stories in illustrated form and comic book stories and artwork, namely, comic magazines; printed periodicals in the nature of magazines in the field of comic book stories and artwork; series of comic book style novels; series of non-fiction books in the field of comic books” in cited Reg. No. 5208178, because when the standard character mark is considered vis-à-vis the applied-for mark and identified goods, it is that mark that is most likely to support a finding of likelihood of confusion. *See, e.g., In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (“[I]f there is no likelihood of confusion between applicant’s mark and MAX in typed form, then there would be no likelihood of confusion with the MAX and dot design mark.”).

**B. Strength of the Cited Mark / Number and Nature of Similar Marks**

We next evaluate the strength of the registered mark and the scope of protection to which it is entitled. The fifth *DuPont* factor is the “fame” or strength of the prior mark, and the sixth factor is the number and nature of similar marks in use for similar goods or services. *DuPont*, 177 USPQ at 567. In determining the strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition. *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its

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<sup>7</sup> Hereinafter usually referred to as “cited registration.”

conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”).

Turning first to inherent strength, there is no evidence that KABOOM! possesses any meaning in relation to the goods identified in the registered mark. Thus, we find on this record that KABOOM! is an arbitrary term in connection with the registrant’s goods. There is no evidence regarding the mark’s commercial or marketplace strength.

Applicant argues:

[C]onsidering that the Examining Attorney has identified two KABOOM-containing registrations both for use in connection with comic books is highly probative in this case. It stands to reason that if variations of KABOOM can be registered at the Trademark Office for retail store services featuring comic books and comic books themselves, without a consent/co-existence agreement, then surely there is no likelihood of confusion for a mark containing KABOOM for sports trading cards. Indeed, Applicant submitted evidence of at least three other companies using the word “kaboom” in connection with the sale of other collectable items including comic books, trading cards, and toys.<sup>8</sup>

First, the existence of the two cited registrations owned by different entities falls far short of the evidentiary showings in cases where the existence of third-party uses or registrations was found to demonstrate that the marks at issue exist in a crowded field. *Cf., e.g., Juice Generation, Inc. v. GS Enters LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co.*

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<sup>8</sup> 8 TTABVue 9-10.

*KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015).

Furthermore, the prosecution histories of the applications underlying these third-party registrations are not of record and we are unable to determine the bases for the examining attorneys' decisions regarding the registrability thereof. Applicant argues that the two cited registrations coexist without a consent agreement. However, Applicant's "assertions are unsupported by sworn statements or other evidence, and 'attorney argument is no substitute for evidence.'" *In re OEP Enters., Inc.*, 2019 USPQ2d 309323, \*14 (TTAB 2019) (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (internal quotation omitted)). Thus, the fact that the USPTO has allowed these two registrations does not persuade us that the mark in either cited registration is weak. "It has been said many times that each case must be decided on its own facts." *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (internal citation omitted).

With regard to the asserted "three other companies using the word 'kaboom' in connection with the sale of other collectible items, including comic books,"<sup>9</sup> Applicant submitted with its March 24, 2021 Response to first Office Action<sup>10</sup> and November

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<sup>9</sup> 8 TTABVUE 9.

<sup>10</sup> At 11-13.

11, 2021 Request for Reconsideration<sup>11</sup> webpages from these three entities. A careful review of “KaBoom Comics” indicates that it is a part, or “imprint” of the parent Boom! Studios, which also includes Archaia and BOOM! Box in addition to KaBoom!.<sup>12</sup> In other words, this entity is the owner of the cited Reg. No. 5208178. The remaining two third parties offer non-fungible token (NFT) trading cards and toys. Applicant argues that “both of these products are collectable items just as comic books and trading cards are collectibles.”<sup>13</sup> However, neither are included in the identified goods in the cited registration, and thus are only assertedly related thereto.

As noted above, we find that the registered mark is arbitrary as applied to the identified goods. There is no evidence of probative third-party use; moreover, there is only the other cited registration of a somewhat similar mark. *Cf. Juice Generation*, 115 USPQ2d at 1674-75; *Jack Wolfskin*, 116 USPQ2d at 1135-36. We therefore find that the registered mark is entitled to the broad scope of protection arbitrary and distinctive marks enjoy. *See Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (stating that likelihood of confusion fame varies along a spectrum from very strong to very weak).

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<sup>11</sup> At 30-41.

<sup>12</sup> March 24, 2021 Response to first Office Action at 11-13; November 11, 2021 Request for Reconsideration at 30-34.

<sup>13</sup> 8 TTABVUE 10 n.1.



### C. The Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's mark and the registered mark in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion*, 110 USPQ2d at 1160; *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014); *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 re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018).

Applicant's KABOOM! mark in standard characters is identical in every respect to the registered KABOOM! mark in standard characters. The fact that the marks are identical results in this factor strongly supporting a finding of likelihood of confusion. *In re Shell Oil Co.*, 26 USPQ2d at 1688 ("Without a doubt the word portion of the two marks are identical, have the same connotation, and give the same commercial impression. The identity of the words, connotation, and commercial impression weighs heavily against the applicant.").

Furthermore, "even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to an assumption that there is a common source." *Id.* at 1689. *See also Amcor, Inc. v. Amcor Indus., Inc.*, 210 USPQ 70, 78

(TTAB 1981) (When both parties are using or intend to use the identical designation, “the relationship between the goods on which the parties use their marks need not be as great or as close as in the situation where the marks are not identical or strikingly similar”).

Applicant argues:

Turning next to Boom Entertainment’s registration for KaBOOM!, again, the connotations of the marks are entirely distinct. The fact that Boom Entertainment’s mark is used in connection with comic books impresses in the minds of consumers that the term represents the sound of a loud explosion as often depicted in comic book strips. Further, the prefix “Ka” in the cited mark includes a lowercase “a” further emphasizing that “BOOM” refers to the sound of a loud explosion. Applicant’s Mark, which is in all uppercase lettering, does not implicate the same commercial impression.<sup>14</sup>

The registration certificate for the cited registration displays the mark as KaBOOM!. However, the mark is presented in standard characters so there are no differences between the displays of the cited and applied-for marks. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000) (“Registrations with typed drawings are not limited to any particular rendition of the mark and, in particular, are not limited to the mark as it is used in commerce”); *In re Cox Enters. Inc.*, 82 USPQ2d 1040, 1044 (TTAB 2007) (“We must also consider that applicant’s mark, presented in typed or standard character form, is not limited to any special form or style as displayed on its goods”). Marks presented in standard characters are not limited to any particular depiction. The rights associated with a

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<sup>14</sup> 8 TTABVUE 9.

mark in standard characters reside in the wording and not in any particular display. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909-11 (Fed. Cir. 2012). Thus, the marks are identical in appearance and sound, and there is no evidence to suggest KABOOM! will have a different meaning or connotation as applied to Applicant's goods from that engendered by KABOOM! or even KaBOOM! as applied to the goods identified in the cited registration. The marks convey identical commercial impressions.

The first *DuPont* factor thus weighs heavily in favor of finding a likelihood of confusion.

#### **D. The Goods, Channels of Trade, and Classes of Customers**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). “This factor considers whether ‘the consuming public may perceive [the respective goods or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard*, 62 USPQ2d at 1004).

In support of the refusal of registration, the Examining Attorney introduced with the September 25, 2020 first Office Action,<sup>15</sup> May 13, 2021 final Office Action<sup>16</sup> and December 10, 2021 second final Office Action<sup>17</sup> printouts from the following thirteen third-party websites, offering and advertising, under the same trademarks and tradenames, sports trading cards and comic books.

- Dave & Adam's featuring comic books and sports trading cards;
- More Fun Sportscards Store featuring comic books and sports trading cards;
- Rainbow Comics, Cards, & Collectibles featuring comic books and sports trading cards;
- Collector's World featuring comic books and collectible sports trading cards;
- Green Flash Comics featuring comic book and collectible sports trading cards;
- Parlor City Cards & Collectibles featuring comic books and sports trading cards;
- Sports Cards Memorabilia & Models featuring comic books and collectible sports trading cards;
- SCG Hobby featuring comic books and sports trading cards;
- All Star Sports Cards & Comics featuring comic books and sports trading cards;
- Digital Heroes featuring comic books and sports trading cards;

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<sup>15</sup> At 12-31.

<sup>16</sup> At 9-28.

<sup>17</sup> At 8-30.

- DJ's Cards and Comics featuring comic books and sports trading cards;
- KCK Collectibles featuring comic books and sports trading cards; and
- Tony eTrade featuring comic books and collectible sports trading cards.

This evidence demonstrates that at least these third parties offer both Applicant's goods and the goods identified in the cited registration under the same trademarks and trade names.

The Examining Attorney also introduced into the record with the May 13, 2021 final Office Action,<sup>18</sup> copies of six use-based, third-party registrations for marks identifying, inter alia, trading cards and comic books. The following examples are illustrative:

- RYAN'S WORLD (Reg. No. 5903911) for comic books; collectable and sports trading cards;
- RED SONJA (Reg. No. 5743889) for comic books; collectible trading cards; and
- COFFIN COMICS (Reg. No. 5825297) for comic books; collectible trading cards.

As a general proposition, although use-based, third-party registrations alone are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless may have some probative value to the extent they may serve to suggest that the goods are of a kind that emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert*

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<sup>18</sup> At 29-47.

*Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). In this case, the totality of the website and third-party registration evidence demonstrates that consumers would readily expect that sports trading cards and comic books could emanate from the same source.

Applicant argues: (internal citations omitted)

However, the evidence submitted by the Examining Attorney in this instance is unpersuasive because not only does it show that collectable stores provide a vast assortment of goods, it also shows that collectable stores will sell these products branded under different names. For example, All Star Sports Cards & Comics sells comic books and sports cards, but also sells “old Fisher Price toys,” “WWII military items,” “Florida Gators programs especially pre 1970,” and “statues and busts.”<sup>19</sup>

However, we are not comparing the Fisher Price toys, WWII memorabilia, statues, busts or other goods offered on the third-party websites marked with different trademarks and brand names. We are comparing Applicant’s sports trading cards and the comic books and other books identified in the cited registration. These goods are offered under the same trade names and trademarks and are probative of the relatedness of the goods at issue. Applicant offers little additional argument or evidence to traverse a finding that on this record, Applicant’s sports trading cards and at least the comic books identified in the cited registration are related for purposes of our likelihood of confusion determination.

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<sup>19</sup> 8 TTABVUE 6.

Clearly, there are distinctions between these goods. However, to support a finding of likelihood of confusion, it is not necessary that the goods be identical or even competitive. 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. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009).

With regard to the third *DuPont* factor, the similarity of the trade channels in which the goods are encountered, the above website evidence demonstrates that thirteen third parties provide sports trading cards and comic books on their websites and, where applicable, at their corresponding physical locations, i.e., through the same trade channels to the same purchasers. Further, we must base our likelihood of confusion determination on the basis of the goods as they are identified in the application and registration at issue. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). *See also Octocom*, 16 USPQ2d at 1787 (“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”).

In other words, we may not limit or restrict Applicant's broadly identified sports trading cards or Registrant's broadly identified comic books by price point or quality, but rather we must consider both to include modestly priced cards and comics as well as more expensive, rare and exclusive varieties.

The evidence of record demonstrates that both Applicant's goods and the registrant's goods may be encountered by the same classes of consumers under the same marks in at least one common trade channel, i.e., the physical locations and corresponding websites of trading card and comic book publishers and sellers. In addition, the identifications of goods in the cited registration and involved application do not recite any limitations as to the channels of trade in which the goods are or will be offered. In the absence of trade channel limitations on the goods offered under the applied-for and registered marks, we must presume that these goods are offered in all customary trade channels. *See Citigroup v. Cap. City Bank Grp.*, 98 USPQ2d at 1261; *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

We find that the *DuPont* factors of the relatedness of the goods, channels of trade and consumers weigh in favor of likelihood of confusion.

#### **E. Consumer Sophistication and Conditions of Sale**

Applicant's unsupported argument that the involved goods would be purchased by sophisticated consumers is not persuasive. There is nothing in the identification of goods to indicate that the comics and sports trading cards are restricted to rare or exclusive collectibles, offered at only high prices and purchased only by consumers with specialized knowledge.



Even if we accept, in considering the fourth *DuPont* factor, Applicant's assertion that the involved goods may be the subjects of sophisticated purchases, even careful purchasers are likely to be confused by identical marks. As stated by the Federal Circuit, "[t]hat the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods. 'Human memories even of discriminating purchasers ... are not infallible.'" *In re Rsch. and Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) quoting *Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970).

Therefore, the fact that the purchasers may exercise care before purchasing these goods does not mean there can be no likelihood of confusion. In the present case, the identity of the marks and the relatedness between some of the goods outweigh any sophisticated purchasing decision. *See HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods.)

## **F. Conclusion**

When we consider the record and the relevant likelihood of confusion factors, and all of Applicant's arguments relating thereto, we conclude that consumers familiar with goods identified in the cited registration offered under its mark would be likely to believe, upon encountering Applicant's mark, that the goods originated with or are associated with or sponsored by the same entity.

Serial No. 90004362

**Decision:** The refusal to register Applicant's mark KABOOM! is affirmed under Section 2(d) of the Trademark Act.