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Precedent of the TTAB

Mailed: February 9, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re MYBAGSTORES.COM

Serial No. 90726300

Adam J. Bruno of Bay State IP, LLC
for MYBAGSTORES.COM.

Laura Fionda, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.

Before Lykos, Heasley, and Elgin,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, MYBAGSTORES.COM, a California Corporation, seeks registration
on the Principal Register of the mark



for “Purses; All-purpose carrying bags; Carry-all bags; Clutch bags; Cosmetic bags sold empty; Duffle bags; Leather bags; Leather and imitation leather bags; School bags; Travel bag organizer inserts specially adapted to travel bags; Travel bags; Wash bags sold empty for carrying toiletries” in International Class 18.¹

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, in connection with the identified goods, so resembles the registered mark OMG (in typeset form) for inter alia “All purpose sport bags, tote bags, and textile shopping bags” in International Class 18, as to be likely to cause confusion, to cause mistake, or to deceive.²

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

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused

¹ Application Serial No. 90726300 was filed on May 21, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and use in commerce since at least as early as November 1, 2020. According to the Application’s description, “[t]he mark consists of a stylized version of OMG ORGANIZE MY GEAR.” Color is not claimed as a feature of the mark.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system and identify the documents by title, date, and page in the downloadable .pdf version. Citations to the briefs and other materials in the appeal record refer to the Board’s TTABVue online docket system.

² Registration No. 2605263 issued on the Principal Register on August 6, 2002. Section 8 and 15 declarations accepted and acknowledged. A mark depicted as a “typeset” drawing is the legal equivalent of a standard character mark. *See* Trademark Rule 2.52, 37 C.F.R. § 2.52; *In re Viterra, Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012); *Mystery Ranch, Ltd. v. Terminal Moraine Inc.*, 2022 USPQ2d 1151, *9 n.5 (TTAB 2022).

registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d).

The fundamental purposes underlying Section 2(d) are to prevent consumer confusion as to source and to protect trademark owners from damage caused by registration of confusingly similar marks. *Jack Daniel's Props., Inc. v. VIP Prods. LLC*, 599 U.S. 140, 2023 USPQ2d 677, *4-5, 10 (2023); *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995).³

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the “*DuPont* factors”) cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha*

³ As part of an internal Board pilot citation program on possibly broadening acceptable forms of legal citation in Board cases, this decision varies from the citation form recommended in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (June 2023). This decision cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th) and/or the United States Patents Quarterly (USPQ). For decisions of the Board and the Director, this decision employs parallel citations to both the USPQ and to the WESTLAW database (WL). Until further notice, however, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

Steaks Int'l, Inc. v. Greater Omaha Packing Co., 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018).

We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). But we “may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Relatedness of 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...” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567; *Stone Lion Cap. Partners*, 110 USPQ2d at 1161. A proper comparison of the goods “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 Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)).

Again, Applicant’s identified goods are:

Purses; All-purpose carrying bags; Carry-all bags; Clutch bags; Cosmetic bags sold empty; Duffle bags; Leather bags; Leather and imitation leather bags; School bags; Travel bag organizer inserts specially adapted to travel bags; Travel bags; Wash bags sold empty for carrying toiletries.

Registrant's identified goods are: "All purpose sport bags, tote bags, and textile shopping bags."

Applicant contends that its goods are "highly specific," including organizer inserts specially adapted to travel bags.⁴ It "concedes that both Applicant's goods and the goods covered under the Cited Mark could be classified as luggage or baggage," but contends that "this industry is exceptionally broad, so this existence of goods in the same industry is a negligible connection upon which to base a finding that the goods are commercially related."⁵

We find, however, that Applicant's broadly worded "all-purpose carrying bags; carry-all bags" encompass and are legally identical to Registrant's "all purpose sport bags, tote bags" and other bags. *In re Hughes Furniture Indus., Inc.*, 2015 WL 1734918, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'"); *In re Fat Boys Water Sports LLC*, 2016 WL 3915986, 118 USPQ2d 1511, 1518 (TTAB 2016) ("Inasmuch as Registrant's goods are encompassed within the scope of Applicant's goods, the respective goods are legally identical in part.").

Legally identical goods are presumed to travel in same channels of trade to the same class of purchasers. *In re Viterra*, 101 USPQ2d at 1908 (even though there was no evidence regarding channels of trade and classes of consumers, the Board was

⁴ Applicant's brief, 6 TTABVUE 16.

⁵ *Id.* at 17.

entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *see also In re Smith & Mehaffey*, 1994 WL 417267, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”), *quoted in In re FabFitFun, Inc.*, 2018 WL 4043156, 127 USPQ2d 1670, 1672-73 (TTAB 2018).

Because we have found that the goods identified in the involved Application are legally identical to the goods identified in the cited Registration, “there is no need for us to further consider the relatedness of the goods,” *In re FabFitFun*, 127 USPQ2d at 1672. But for the sake of completeness, we note that the Examining Attorney has introduced into the record website screenshots from samsonite.com, travelpro.com, llbean.com, tourparavel.com, awaytravel.com, gucci.com, landsend.com, katespade.com, tommy.com, michaelkors.com, coach.com, and marcjacobs.com⁶—all showing that the same entity commonly provides Applicant’s and Registrant’s kinds of goods under the same mark. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both....”).

⁶ Jan. 8, 2022 Office Action TSDR 7-15; Aug. 3, 2022 Office Action TSDR 7-61; May 15, 2023 Office Action (Request for Reconsideration Denied) TSDR 11-205.

Consequently, the second and third *DuPont* factors weigh in favor of finding a likelihood of confusion.

B. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee 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 Inn at St. John's, LLC*, 2018 WL 2734893, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 2014 WL 2531200, 110 USPQ2d 1810, 1812 (TTAB 2014)).

"We keep in mind that where, as here, the goods are in-part identical, less similarity between the marks is needed for us to find a likelihood of confusion. *Bridgestone Ams. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.").

Applicant's mark, again, is



and Registrant's mark is OMG.

As the Examining Attorney correctly notes, Applicant's mark, albeit in stylized font, incorporates the entirety of Registrant's mark.⁷ Applicant argues that there is no per se rule that confusion is automatically likely merely because marks share similar wording.⁸ It is true that such a finding does not follow automatically. But still, "[l]ikelihood of confusion often has been found where the entirety of one mark is incorporated within another." *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 WL 4877349, 2019 USPQ2d 377409, *6-7 (TTAB 2019) (quoting *Hunter Indus., Inc. v. Toro Co.*, 2014 WL 1649332, 110 USPQ2d 1651, 1660 (TTAB 2014)).

In this case, Applicant not only adopts Registrant's OMG mark; it places it prominently at the forefront of its own mark. "Displayed in a large, bold typeface, it comprises the largest literal portion of the mark in terms of size, position, and emphasis. It is also the first term in the mark, further establishing its prominence." *In re Aquitaine Wine USA, LLC*, 2018 WL 1620989, 126 USPQ2d 1181, 1184-85 (TTAB 2018) (citing *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)). The prominent, dominant part of Applicant's mark would appear and

⁷ Examining Attorney's brief, 8 TTABVUE 5.

⁸ Applicant's brief, 6 TTABVUE 11.

sound like Registrant’s OMG mark. *See In re Ox Paperboard, LLC*, 2020 WL 4530517, 2020 USPQ2d 10878, *4 (TTAB 2020) (“The literal portion of Applicant’s and Registrant’s mark is identical making them aurally similar.”). The vertical line in Applicant’s “O” is unpronounceable, and would make little or no difference in the mark’s appearance or sound. *See Davia*, 110 USPQ2d at 1814 (“As for the raised dots and periods in the mark, they are unpronounceable and contribute very little to the overall commercial impression of the mark.”). The marks thus share a common dominant element, “OMG,” which we may give more weight, as long as we ultimately compare the marks in their entireties. *In re Viterra*, 101 USPQ2d at 1908; *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant, focusing on its mark in its entirety,



notes that it adds three words, “ORGANIZE MY GEAR.” Applicant argues the three additional words create a total of eight syllables, and “contextualize and distinguish” Applicant’s mark from Registrant’s “OMG.”⁹

However, “[p]urchasers of [goods] do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both.” *In re John Scarne Games, Inc.*, 1959 WL 5901, 120 USPQ 315, 316 (TTAB 1959). Applicant’s three additional words appear inconspicuously at the bottom of its mark, in much smaller font than the prominent, dominant “OMG” component. “[I]f the dominant portion of both marks is the same, then confusion may be likely

⁹ Applicant’s brief, 6 TTABVUE 12-13, 16.

notwithstanding peripheral differences.” *In re Denisi*, 1985 WL 72008, 225 USPQ 624, 624 (TTAB 1985). For instance, in *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003), where “Blue Moon Brewing Co.” appeared “at the bottom of the mark in significantly smaller font, it was reasonable for the Board to find that those words do not significantly contribute to distinguishing the two marks,” *quoted in In re I-Coat Co., LLC*, 2018 WL 2753196, 126 USPQ2d 1730, 1736 (TTAB 2018). Here, if anything, Applicant’s three added words, taken in context, yield the impression that Registrant added the subordinate slogan to explain what **OMG** stands for.¹⁰ *See UMG Recordings, Inc. v. Mattel, Inc.*, 2011 WL 5014005, 100 USPQ2d 1868, 1886 (TTAB 2011) (“However, we must look to the likely consumer perception of the mark in connection with the identified goods, rather than applicant’s intended connotation.”).

Applicant argues that “the ‘OMG’ in Applicant’s mark is highly stylized....”¹¹ But as the Examining Attorney rightly notes,¹² the cited mark is registered in typeset/standard characters, regardless of font style or size, so Registrant could display its OMG mark in a way that minimizes the differences and emphasizes the similarities between the marks. *Made in Nature, LLC v. Pharmavite LLC*, 2022 WL 2188890, 2022 USPQ2d 557, *42 (TTAB 2022).

Applicant then argues, somewhat incongruously, that its mark, which its Application describes as “stylized,” is actually a word-and-design mark: “the ‘O’ in

¹⁰ Examining Attorney’s brief, 8 TTABVUE 5.

¹¹ Applicant’s brief, 6 TTABVUE 11.

¹² Examining Attorney’s brief, 8 TTABVUE 6-7.

‘OMG’ is the popular, and universally recognized, power symbol commonly seen on electronic devices.... [T]he stylized ‘O’ as the power symbol helps to communicate to consumers that the purses, and bags that they manufacture and produce are designed to carry electronics that the consumer may own.”¹³

That minimal design element, however, is unlikely to impel consumers to distinguish between Applicant’s and Registrant’s bags. The subject Application identifies such items as “all-purpose carrying bags, carry-all bags; cosmetic bags sold empty” and “wash bags sold empty for carrying toiletries.” The Registration identifies “all purpose sport bags, tote bags, and textile shopping bags.” Neither identifies bags specially designed to carry electronic goods, and both identify all-purpose bags that could be used for that purpose. In short, the identified goods are equally suitable for carrying electronics.

Applicant also imputes too much discernment to the relevant consumers. The consumers—members of the general public seeking bags for a variety of purposes—cannot be expected to scrutinize the respective marks to discern a detail so minute as to be hardly noticeable. As the Board has observed:

[I]n the normal environment of the marketplace where purchases are actually made, purchasers and prospective purchasers would not usually have the opportunity for a careful examination of these marks in minute detail.... *See Grandpa Pidgeon’s of Mo., Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973) (differences in marks not likely to be recalled by consumers at spaced intervals; purchasers do not engage in trademark dissection). An individual relies on the recollection of the various marks that he or she has previously seen in the marketplace, ...

¹³ Applicant’s brief, 6 TTABVUE 16. *See* Wikipedia article re power symbol: en.wikipedia.org/wiki/Power_symbol, January 20, 2023 Response to Office Action (Request for Reconsideration) at TSDR 25-26.

and, more frequently than not, such recollection is not enhanced with minute details or specific characteristics of the marks, but is determined by an overall or general impression of the many and various marks that exist in the marketplace.

In re Info. Builders Inc., 2020 WL 2094122, 2020 USPQ2d 10444, *6-7 (TTAB 2020).

Considered in their entirety, the marks are much more similar than dissimilar, and the first *DuPont* factor weighs in favor of finding a likelihood of confusion.

C. Strength or Weakness of the Cited Registered Mark

Under the fifth and sixth *DuPont* factors, we consider the strength of the cited registered mark, and the extent to which that strength may be attenuated by “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567. The mark’s strength may vary along a spectrum from very strong to very weak, *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017), measured in terms of its conceptual and commercial strength. *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 conceptual strength (distinctiveness) and its marketplace strength ...”), *quoted in Advance Mag. Publishers, Inc. v. Fashion Elecs., Inc.*, 2023 WL 4261426, 2023 USPQ2d 753, *9 (TTAB 2023).

In ex parte appeals, where the Registrant is not a party, the Examining Attorney is not usually expected to adduce evidence of the cited registered mark’s strength or “fame,” and the fifth *DuPont* factor is, in consequence, treated as neutral. *In re Mr. Recipe, LLC*, 2016 WL 1380730, 118 USPQ2d 1084, 1086 (TTAB 2016). Nonetheless, the Applicant in such an appeal may seek to contract the cited mark’s scope of

protection by adducing evidence of “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567. This evidence usually takes the form of registrations and/or websites displaying third-party marks. An Applicant adduces such evidence because “[t]he weaker [a Registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015), *quoted in Monster Energy Co. v. Lo*, 2023 WL 417620, 2023 USPQ2d 87, *19 (TTAB 2023).

In this case, Applicant asserts that the cited mark is only entitled to a limited scope of protection because “OMG” is an acronym for the common phrase “Oh My God,” and has been “a part of the American vernacular since the 1990s.”¹⁴ Standing alone, this assertion is no substitute for evidence. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018). The only evidence Applicant adduces consists of third-party registrations, which fail to show that the registered mark OMG is weak as used on bags. In the course of prosecution, Applicant first submitted a list of search results from the USPTO’s former Trademark Electronic Search System (“TESS”) summarizing the Serial numbers and word marks of over fifty applications and two registrations. For example:

¹⁴ Applicant’s brief, 6 TTABVUE 18-19.

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Refine Search (omg*)(COMB)

Current Search: S2: [omg*][COMB] docs: 596 occ: 758

Export displayed results (1 ~ 50)

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead	Class(es)
1	97428025		HOBBY OMG	TSDR	LIVE	
2	97164447	6746868	OMGBLASTER	TSDR	LIVE	
3	97409421		OMG CANDY STORE	TSDR	LIVE	
4	97288856		OMG-POURRI	TSDR	LIVE	
5	97358167		OMG BURGER!	TSDR	LIVE	
6	97335722		OMG TRANSACT	TSDR	LIVE	
7	97010535		OMG!! POP FIDGETY	TSDR	LIVE	
8	97323907		OMG UR A TEENAGER	TSDR	LIVE	

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A list of this sort has no probative value; the summaries are not official records, and they fail to disclose the marks’ corresponding identification of goods and services. *See In re Eagle Crest, Inc.*, 2010 WL 3441109, 96 USPQ2d 1227, 1229 (TTAB 2010) (“The mere listing of third-party registrations and/or applications, without copies or electronic printouts thereof, is insufficient to properly make them of record. ... We have no information as to the goods in the listed registrations and applications....”).

Later, in its Request for Reconsideration, Applicant introduced printouts of third-party applications and registrations, but these also fall short of proving that Registrant’s OMG mark is weak as used on bags.

- LIKE OMG!, Reg. No. 5952586 for “backpacks,” inter alia, is not based on use in commerce in the United States, as it issued under Section 44(e), the Paris Convention, and no Section 8 declaration of use has been filed;¹⁶ accordingly, it lacks probative value. *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, 2011 WL 4090446, 100 USPQ2d 1213, 1221 n.15 (TTAB 2011).

¹⁵ June 6, 2022 Response to Office Action TSDR 12-13.

¹⁶ Jan. 20, 2023 Response to Office Action (Request for Reconsideration) TSDR at 27-28.

- XOMG POP! and OMGMOMENTS.COM, Application Serial Nos. 90807435 and 90681007, respectively, were both filed on the basis of intent-to-use; the first has filed no Statement of Use, and the second encountered a refusal and suspension.¹⁷ Third-party applications are evidence only of the fact that they have been filed. *In re Sibony*, 2021 WL 4812119, 2021 USPQ2d 1036, *8 (TTAB 2021).
- Six of the registrations/applications incorporate the letters “OMG” into larger marks: HOMGAVA, VOMGOMFOM, HDDCOMG, E-KOMG, BOOMGOO, and HOMGREEN.¹⁸ None of these marks displays the letters “OMG” in a segment that would reasonably be interpreted as an acronym.

That leaves only one relevant registration, MISS GWEN’S OMG ACCESSORIES, Reg. No. 6201803, which is based on use in commerce.¹⁹ “[O]ne third-party registration has little probative value, especially in the absence of evidence that the mark is in use on a commercial scale or that the public has become familiar with it.” *In re Mr. Recipe*, 118 USPQ2d at 1089. Applicant submits no evidence of commercial use.

The cited mark is registered on the Principal Register without a claim of acquired distinctiveness, and must be treated as inherently distinctive. 15 U.S.C. § 1057(b). *Monster Energy v. Lo*, 2023 USPQ2d 87, at *20; *In re Fiesta Palms LLC*, 2007 WL 950952, 85 USPQ2d 1360, 1363 (TTAB 2007). Applicant’s evidence does nothing to contract or attenuate the strength of Registrant’s mark, conceptually or commercially. We thus accord the registered mark the normal scope of protection to

¹⁷ *Id.* at 41-43.

¹⁸ *Id.* at 32-42. Moreover, one of the registrations, No. 6130394 for E-KOMG, identifies pet collars, not bags.

¹⁹ *Id.* at 30.

which inherently distinctive marks are entitled. The fifth and sixth *DuPont* factors are neutral.

II. Conclusion

We have considered the arguments and evidence of record. Assigning weight to the relevant *DuPont* factors, *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, *7 (Fed. Cir. 2023), we find that Applicant's and Registrant's marks are more similar than different, and that Registrant's mark is not weakened by the evidence of third-party registrations. The respective identified goods are also legally identical, and we may presume that such goods would travel through overlapping channels of trade to the same classes of consumers. We accordingly find a likelihood of confusion under Section 2(d), 15 U.S.C. § 1052(d).

Decision: The refusal to register Applicant's mark is affirmed.