

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: October 22, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Troop Nutrition, Inc.

v.

BW Essentials LLC

Opposition No. 91287431


Matthew G. Miller of Lerner David LLP,
for Troop Nutrition, Inc.

Jonathan A. Menkes, Jacob R. Rosenbaum, and Eric Blosser of Knobbe Martens
Olson & Bear, LLP,
for BW Essentials LLC.

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

Opinion by Elgin, Administrative Trademark Judge:

BW Essentials LLC (“Applicant”) seeks registration on the Principal Register of
the following marks:

- Ser. No. 97591423 for  (NOOTROPICS disclaimed) for
“Dietary supplements; Dietary supplements in the form of gummies,
capsules, and powder; Dietary supplements for sleep and relaxation and
mood enhancement; Dietary supplements using natural nootropic
ingredients; Nutritional supplements; Nutritional supplements in the form

of gummies, capsules, and powder” in International Class 5, filed September 14, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b);


troomy

- Ser. No. 97591430 for **troomy** for “Dietary Supplements, Dietary Supplements in the form of gummies, capsules, and powder. Dietary Supplements for sleep and relaxation and mood enhancement. Dietary Supplements using natural nootropic ingredients. Nutritional Supplements, Nutritional Supplements in the form of gummies, capsules, and powder” in International Class 5, filed September 14, 2022 under Section 1(b) of the Trademark Act;¹
- Ser. No. 97834056 for TROOMY (standard characters) for “Dietary supplements; Dietary supplements for sleep, relaxation, and mood enhancement; Dietary supplements in the form of gummies, capsules, oil, and powder; Dietary and nutritional supplements; Dietary and nutritional supplements containing natural nootropic ingredients” in International Class 5, filed March 10, 2023 under Section 1(b) of the Trademark Act; and
- Ser. No. 97834082 for TROOMY NOOTROPICS (standard characters, NOOTROPICS disclaimed) for “Dietary supplements; Dietary supplements for sleep, relaxation, and mood enhancement; Dietary supplements in the form of gummies, capsules, oil, and powder; Dietary and nutritional supplements; Dietary and nutritional supplements containing natural nootropic ingredients” in International Class 5, filed March 10, 2023 under Section 1(a) of the Trademark Act, claiming first use and first use in commerce as of October 12, 2022.

Troop Nutrition, Inc. (“Opposer”) filed a Notice of Opposition against registration of Applicant’s marks based on likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Opposer pleaded ownership of the mark TROOP for dietary and nutritional supplements since as early as March 23, 2022. Opposer also pleaded ownership of two pending intent-to-use applications for the marks, which have

¹ In Ser. Nos. 97591430 and 97591423, the marks are described respectively as “the stylized bold wording ‘troomy’ with the letters ‘oo’ connected”; and “the stylized bold wording ‘troomy’ with the letters ‘oo’ connected above the stylized wording ‘NOOTROPICS’”. Color is not claimed as a feature of either mark.

matured during the course of these proceedings to the following registrations on the Principal Register:

- Reg. No. 7334349 for TROOP (standard characters) for “dietary and nutritional supplements containing mushroom extract; nutritional supplement bars containing mushroom extract; powdered drink mix containing mushroom extract for use as a nutritional supplement” in International Class 5 and “protein-enriched coffee containing mushroom extract” in International Class 30, claiming first use and first use in commerce as of October 19, 2023, and registered March 26, 2024;
- Reg. No. 7436674 for  for “[D]ietary and nutritional supplements containing mushroom extract” in International Class 5, claiming first use and first use in commerce as of January 21, 2022, and registered July 9, 2024.

Applicant denied the salient allegations of the Notice of Opposition in its Answer.²

Both parties filed evidence and briefs.³ We have considered the evidence of record and arguments made by the parties. For the reasons set forth below, we dismiss the opposition.

² 9 TTABVUE. Citations to the briefs and other materials in the case docket refer to the publicly available filings in TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 TTAB LEXIS 199, at *4-5 n.1. This opinion cites to decisions of the Board in the Lexis legal database. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2025). The proceeding number is provided where available.

³ Opposer’s brief is at 16 TTABVUE. Applicant’s brief is at 17 (public) and 18 (confidential) TTABVUE. Opposer did not file a reply brief. Confidential information is discussed only generally, given its nature.

I. The Record and Evidentiary Issues

The record includes the pleadings and, under Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the files of the opposed applications. Opposer made of record the following evidence during its main and rebuttal trial periods:

- The Testimony Declaration of Opposer's co-founder Stephanie Moyal and exhibits ("Moyal Decl.");⁴ and
- Rebuttal Notice of Reliance on Applicant's responses to Opposer's requests for admission and interrogatories.⁵

Applicant made of record the following evidence during its trial period:

- Testimony Declaration of Bryan Garrison, Vice President of Alternative Products at Streamline Group, Applicant's parent company and exhibits ("Garrison Decl.");⁶ and
- Notice of Reliance on third-party registrations and various Internet website printouts.⁷

In its case-in-chief, Opposer made of record "soft" copies of its certificates of registration for Reg. Nos. 7334349 and 7436674, along with testimony that Opposer "owns" these registrations.⁸ The certificates cannot be deemed to be current "status and title" copies of the registrations under Trademark Rule 2.122(d); *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 1554 (Fed. Cir. 1991) (photocopy of

⁴ 10 (public) and 11 (confidential) TTABVUE.

⁵ 15 TTABVUE. The responses to the second set of interrogatories do not include a verification as required by FED. R. CIV. P. 33(b)(5).

⁶ 13 (public) and 14 (confidential) TTABVUE. Opposer also made Mr. Garrison's declaration of record in its rebuttal trial period under a notice of reliance, which was unnecessary. *See* Trademark Rule 2.122(a), 37 C.F.R. § 2.122(a) ("When evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.").

⁷ 12 TTABVUE.

⁸ 10 TTABVUE 2-3 (Moyal Decl. ¶¶ 2-3), 13-17 (Exh. A).

registration without status and title information insufficient); *see also* TBMP § 704.03(b)(1)(A). However, Applicant has neither contested Opposer's testimony that it owns the relied-upon registrations nor questioned that the registrations currently are in force. In fact, Applicant's counsel assumes that they are properly of record as part of Opposer's case in his recitation of the record.⁹ Accordingly, we treat the registrations' currency and ownership by Opposer as having been stipulated. *Floralife, Inc. v. Floraline Int'l Inc.*, No. 91067107, 1984 TTAB LEXIS 12, at *3 n.6 (applicant's treatment of pleaded registrations as properly of record in its trial brief was deemed a stipulation as to current status and title).

II. Entitlement to a Statutory Cause of Action

To establish statutory entitlement to oppose under Trademark Act Section 13, 15 U.S.C. § 1063, Opposer must demonstrate a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1372 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 1275 (Fed. Cir. 2014); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1376 (Fed. Cir. 2012).

Opposer has presented testimony declarations by Ms. Moyal attesting that Opposer has used the TROOP marks for dietary and nutritional supplements at least as early as January 21, 2022. Further, Opposer's pleaded registrations are sufficient to demonstrate Opposer's entitlement to a statutory cause of action. *See New Era Cap Co.*, 2020 TTAB LEXIS 199, at *16-17 (pleaded registrations establish statutory

⁹ 17 TTABVUE 7.

entitlement to bring opposition under Section 2(d)). Applicant did not challenge Opposer's entitlement to a statutory cause of action.

We find that Opposer has established its entitlement to assert the claim in this proceeding by a preponderance of the evidence.

III. Priority

“Section 2(d) of the Trademark Act permits an opposer to file an opposition on the basis of ownership of ‘a mark or trade name previously used in the United States . . . and not abandoned.’” *DeVivo v. Ortiz*, No. 91242863, 2020 TTAB LEXIS 15, at *7 (quoting 15 U.S.C. § 1052(d)). “To establish priority, the mark must be distinctive, inherently or otherwise, and Opposer must show proprietary rights in a mark as to which Applicant's mark gives rise to a likelihood of confusion.” *Id.* (citing *Otto Roth & Co. v. Univ. Foods Corp.*, 640 F.2d 1317, 1321 (CCPA 1981)). “These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights.” *Id.* (citing *Herbko Int'l, Inc. v. Kappa Books Inc.*, 308 F.3d 1156, 1162 (Fed. Cir. 2002)).

Opposer's pleaded registrations are stipulated into the record, and Applicant did not counterclaim or file a separate proceeding to cancel them. Where an opposer pleads and establishes a valid registration against an application, the issue of priority does not arise. In such case, the opposer does not have to prove prior use of that registered mark for its identified goods or services, and the filing date of the application underlying its registration is irrelevant. *See King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1402 (CCPA 1974); *Nkanginieme v. Appleton*, No.

91256464, 2023 TTAB LEXIS 64, at *11-12 (“[U]nless there is a counterclaim against the opposer’s pleaded and proven registration, priority is not at issue in a likelihood of confusion dispute”). Applicant has not contested Opposer’s priority.

IV. Likelihood of Confusion Factors

Section 2(d) of the Trademark Act prohibits registration of a mark that is “likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive” with the opposer’s prior-used mark. Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). “[T]he opposer has the burden of proving a likelihood of confusion by a preponderance of the evidence.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 998 (Fed. Cir. 2020) (citation omitted).

We consider the likelihood of confusion factors for which there is evidence and argument, *see In re Guild Mortg. Co.*, 912 F.3d 1376, 1380 (Fed. Cir. 2019), but “[n]ot all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances.” *Stratus Networks*, 955 F.3d at 999 (citing *In re Dixie Rests.*, 105 F.3d 1405, 1406-07 (Fed. Cir. 1997)). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services under the first and second *DuPont* factors. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103

(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.”).

After assessing all relevant factors, our last step is to “weigh the *DuPont* factors used in [our] analysis *and* explain the results of that weighing.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023) (emphasis in original). “The weight given to each factor depends on the circumstances of each case.” *Id.* at 1381 (citation omitted); *see also Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022) (“Not all of the *DuPont* factors are necessarily relevant or of equal weight in a given case, and any one of the factors may control a particular case.”) (cleaned up; citation omitted).

In this case, we focus our *DuPont* analysis on Opposer’s Reg. No. 7334349 for the mark TROOP (in standard characters) for “dietary and nutritional supplements containing mushroom extract; nutritional supplement bars containing mushroom extract; powdered drink mix containing mushroom extract for use as a nutritional supplement” in International Class 5, because this mark and the associated goods are most similar to Applicant’s marks and goods.¹⁰ If we find a likelihood of confusion between the standard character mark and Applicant’s marks and goods, we need not find it as to Opposer’s stylized mark. Conversely, if we do not find a likelihood of

¹⁰ A standard character mark may appear in any font, style, size, or color. Trademark Rule 2.53(a), 37 C.F.R. § 2.52(a).

confusion as to this mark, we would not find it as to Opposer's stylized mark and goods. *See In re Max Cap. Grp.*, No. 77186166, 2010 TTAB LEXIS 1, at *5.

A. Similarity of the Goods and Channels of Trade

We first turn to the second and third *DuPont* factors addressing the similarity or dissimilarity of the goods and channels of trade. Each of Applicant's challenged TROOMY applications includes the following goods in Class 5: "dietary supplements" and "nutritional supplements." Opposer's pleaded registration for TROOP includes "dietary and nutritional supplements containing mushroom extract" in Class 5.

We must "give the [goods] identified in the application their full scope in our analysis of the second *DuPont* factor." *In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *11 (citing *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *10-11). On its face, Applicant's broadly-described dietary and nutritional supplements include supplements containing mushroom extract. We conclude that the goods in each of Applicant's challenged applications are in-part overlapping, and thus legally identical in part, with the goods in the pleaded TROOP registration. *In re Hughes Furniture Indus.*, No. 85627379, 2015 TTAB LEXIS 65, at *10 (broadly worded identification of "furniture" necessarily encompasses narrowly identified "residential and commercial furniture"). Applicant does not argue otherwise.

We also presume that the channels of trade and classes of purchasers for those legally identical goods overlap. *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of

consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *Am. Lebanese Syrian Assoc. Charities Inc. v. Child Health Rsch. Inst.*, No. 91190361, 2011 TTAB LEXIS 260, at *14. Again, Applicant does not argue otherwise.

We conclude that the second and third *DuPont* factors weigh in favor of likelihood of confusion.

B. Strength or Weakness of Opposer's Pleaded Mark

Before comparing the marks, we consider the strength of Opposer's pleaded mark as that will inform us as to the scope of its protection. "Two of the *DuPont* factors (the fifth and sixth) consider strength." *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). The fifth *DuPont* factor enables Opposer to prove that its pleaded mark is entitled to an expanded scope of protection by adducing evidence of "[t]he fame of the prior mark (sales, advertising, length of use)," whereas the sixth *DuPont* factor allows Applicant to contract that scope of protection by adducing evidence of "[t]he number and nature of similar marks in use on similar goods." *DuPont*, 476 F.2d at 1361. We consider these factors in tandem.

In determining strength or weakness of a mark, we consider its inherent strength, based on the nature of the mark itself, and its commercial strength or recognition. *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength"). Likelihood of confusion strength is not "an all-or-nothing measure." *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323,

1325 (Fed. Cir. 2017). It “varies along a spectrum from very strong to very weak.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1375 (Fed. Cir. 2005). The burden of establishing the strength of its mark falls on Opposer, *Spireon*, 71 F.4th at 1365, but Opposer did not address strength in its brief.

On the other hand, Applicant argued that the TROOP mark is conceptually weak because it is “merely descriptive of the goods on which Opposer uses its marks and listed in the registrations for Opposer’s Marks, namely mushroom-based products.”¹¹ Applicant made of record several website printouts supporting the meaning of TROOP as a group of mushrooms.¹² More importantly, Opposer’s website depicts the following explanations of TROOP as meaning a group of mushrooms that are growing closely together:¹³

¹¹ 17 TTABVUE 13-14. Insofar as Opposer is relying on registrations and Applicant has not counterclaimed for their cancellation, any allegation of mere descriptiveness would be an impermissible collateral attack on the registrations. Trademark Act Section 7(b), 15 U.S.C. § 1057(b). Applicant is free, however, to argue that Opposer’s presumed distinctive marks are weak.

¹² See, e.g., App. Notice of Reliance Exh. 18 (12 TTABVUE 98) (Wiktionary, 11th definition); Exh. 19 (*id.* at 102) (Mushroom Journal); Exh. 20 (*id.* at 106) (website tanelorn.us); Exh. 21 (*id.* 109) (The Collective Nouns dictionary). Except for the Wiktionary definition, these appear to be obscure websites. Wiktionary, like its counterpart Wikipedia, is a collaborative project subject to change based on user input. For this reason, we do not give this evidence much, if any, probative value. See *In re Jimmy Moore LLC*, No. 86353015, 2016 TTAB LEXIS 382, at *8 (“[W]e deny the request to judicially notice the definitions ... taken from Wikipedia because Wikipedia is an Internet source whose contents are continuously subject to change via collaborative user-input.”).

¹³ See App. Notice of Reliance Exh. 16, 17 (12 TTABVUE 90, 91, 94); Garrison Decl. ¶ 4 (13 TTABVUE 3).

troop:
a group of
mushrooms
that grows
closely together



[Home](#) [Products](#) [Meet Your Mushrooms](#) [About Us](#) [Blog](#) [Contact](#)

TAKING CARE OF OUR TROOP

Like the mycelial network, we are all connected. The underground root structure of mushrooms connects ecosystems and transmits nutrients through mycelial microscopic fibers. For instance, if a tree needs more nutrients than another, the mycelium gives more to that particular tree. It's all about giving back to the ecosystem you're a part of. So from our troop to yours, let's create a healthier ecosystem. Like this incredible network, we're here to support all troops by helping you be the healthiest version of you.



What is a "Troop"?

DECEMBER 10, 2021

[🔗 Share](#)

You've probably heard the word "troop" used in a variety of other contexts. What does it mean in the study of mushrooms, and why did we choose it for our company name?

When it comes to classifying mushrooms, mycologists and mushroom foragers have their own set of terminology to describe the way mushrooms are dispersed across a given area. These terms might overlap a little. For example, you can probably guess what it means if we tell you a mushroom is "solitary", but the name is a bit misleading. Because of the network of filament-like mycelium that grows unseen in the ground, solitary mushrooms are rarely actually alone — just farther away from other mushrooms.

Multiple mushrooms growing side-by-side together, usually from a single fruiting mycelial body, are known as clusters. Versus a wide area containing a larger number of mushrooms relatively far apart and in unpredictable patterns are said to be "gregarious".

When a group of mushrooms are referred to as a "troop", they're generally a bit farther apart than a cluster of mushrooms, but more tightly-packed than a gregarious formation. This usually means that several fruiting bodies have been formed within a small area. During especially wet and rainy years, mushrooms readily grow in troops, but they'll do so in drier years as well if troops are typical in their fruiting patterns. It depends on the species.

The pleaded registration issued without a claim of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f). As to this registration, therefore, we must presume the mark to be inherently distinctive — that is, at least suggestive. *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 146 (Fed. Cir. 2021). The evidence of Opposer's use, however, establishes that the mark has some

conceptual weakness in that it refers to a name for a group of mushrooms, a key ingredient in Opposer's dietary and nutritional supplements. Given that Opposer is openly marketing and reinforcing this connotation of its mark TROOP, we conclude that consumers of its products would give the mark this suggestive connotation.¹⁴



Commercial strength "may be measured not only directly by consumer surveys or declarations but also indirectly by the volume of sales and advertising expenditures in connection with the goods or services sold under the mark, and supported by other indicia such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the goods or services identified by the marks; the general reputation of the goods or services; and social media presence." *Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 TTAB LEXIS 494, at *50-51. Although Opposer made of record evidence regarding some of its advertising expenditures and third-party press, as noted above, it did not argue that its mark is conceptually or commercially strong. Moreover, even considering this scant data, we lack any context from which we could reasonably infer the mark's public recognition. *See Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 228, at *36 ("Raw

¹⁴ Applicant also made of record eleven third-party registrations, arguing (albeit under the first *DuPont* factor) that they show that double O's as used in the parties' stylized marks are "common." App. Notice of Reliance Exhs. 1-11 (12 TTABVUE 24-67). Third party registrations can show, in the manner of dictionary definitions, that Opposer's mark has a commonly understood suggestive connotation. *Spireon*, 71 F.4th at 1363. Due to significant differences in the marks (none contain a TROOP formative), and that fact that only two of the marks are use-based for Opposer's goods, we find they are not relevant to show weakness of Opposer's pleaded TROOP mark. *Omaha Steaks Int'l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324-26 (Fed. Cir. 2018) (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992) (the "relevant *du Pont* inquiry is the number and nature of similar marks in use on similar goods.")).

numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be helpful....”).

These *DuPont* factors weigh slightly against a finding of likelihood of confusion. We therefore accord Opposer’s mark slightly less than “the normal scope of protection to which inherently distinctive marks are entitled” under the *DuPont* factors relating to strength. *Cf. Bell’s Brewery, Inc. v. Innovation Brewing*, No. 91215896, 2017 TTAB LEXIS 452, at *20.

C. Similarity of the Marks

Turning to the first *DuPont* factor, we compare Applicant’s marks TROOMY,  , TROOMY NOOTRIPICS, and  to Opposer’s pleaded standard character TROOP mark “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay*, 396 F.3d at 1371 (quoting *DuPont*, 476 F.2d at 1361).

“While the marks must be considered in their entirety, ‘in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.’” *Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 TTAB LEXIS 464, at *39 (quoting *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018)). We keep in mind that the overlapping goods and channels of trade reduce the degree of similarity between the marks necessary to conclude that there is a

likelihood of confusion. *Viterra*, 671 F.3d at 1360; *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348 (Fed. Cir. 2010).

It is true that all of the marks at issue start with TROO__. Applicant argued that, nonetheless, TROOP and TROOMY are distinguishable because they have different suffixes following the letter string (__MY versus __P), different numbers of syllables, and thus appear and are pronounced differently. In addition, Applicant pointed out that two of its marks include the word NOOTROPICS.

We find that, as to both of Applicant's TROOMY NOOTROPICS marks, the leading and distinctive term TROOMY is dominant over the disclaimed descriptive term NOOTROPICS.¹⁵ See *In re Nat'l Data Corp.*, 753 F.2d 1056, (Fed. Cir. 1985) (“[A] descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion....”), quoted in *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947 (Fed. Cir. 2000). In the stylized TROOMY NOOTROPICS mark, the term also is much smaller than the visually dominant TROOMY. We also conclude that TROOP (likely pronounced in its normal way, rhyming with “sloop” and “group”) and TROOMY (likely pronounced as rhyming with “roomy” and “gloomy”) look and sound different overall.

¹⁵ We take judicial notice that “nootropic” is defined as “a substance that enhances cognition and memory and facilitates learning.” MERRIAM-WEBSTER DICTIONARY (www.merriam-webster.com, accessed Oct. 9, 2025). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, No. 85214191, 2014 TTAB LEXIS 94, at *6 n.4; see also *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988) (“dictionaries and encyclopedias may be consulted”).

As to connotation and commercial impression, Applicant argued TROOP and TROOMY engender different meanings. We found above that Opposer's mark TROOP, as applied to Opposer's dietary and nutritional supplements, suggests the mushroom ingredients of these products. Applicant provided uncontroverted testimony evidence that that TROOMY is a coined term (intended to mean "true me" to connote a positive and healthy lifestyle and encourage users to be their "true self" or find their "true me") in combination with the words "shroom" or "shroomy" to refer to the functional mushroom extracts in Applicant's goods.¹⁶

Although we need not rely on extrinsic evidence for this finding, the advertising and packaging for the parties' goods in the record corroborates that the marks have different connotations and commercial impressions that may be conveyed to consumers. *See Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 674 (Fed. Cir. 1984) (trade dress may provide evidence of whether word mark projects a confusingly similar commercial impression); *N. Face Apparel Corp. v. Sanyang Indus. Co.*, No. 91187593, 2015 TTAB LEXIS 328, at *27 (considering opposer's advertising in connection with connotation and commercial impression of the marks, and stating "to the extent that the S-design mark has recognition through Opposer's advertising efforts, promotion of the design in conjunction with the words reinforces the mountain imagery"); *Northwestern Golf Co. v. Acushnet Co.*, No. 91066474, 1985 TTAB LEXIS 86, at *15 ("Evidence of the context in which a particular mark is used on labels, packaging, etc., or in advertising is probative of the

¹⁶ Garrison Decl. ¶ 4 (13 TTABVUE 3).

significance which the mark is likely to project to purchasers.”). We depicted the advertising for Opposer’s products above.¹⁷ Applicant’s packaging and advertising, such as those depicted below, promote its connotation of its TROOMY marks:¹⁸



¹⁷ See pictures accompanying note 13, *supra*.

¹⁸ Garrison Decl. ¶¶ 5-6 (13 TTABVUE 3-9).



Because the products at issue are directly competitive, the degree of similarity required to prove a likelihood of confusion is lessened. *Century 21 Real Estate Corp.*

v. Century Life of Am., 970 F.2d 874, 877 (Fed. Cir. 1992). Nonetheless, comparison of the marks' sight, sound, meaning and overall commercial impressions shows that Opposer cannot meet even this lowered standard, especially given the slightly narrowed scope of protection of its pleaded TROOP mark.

We find that the parties' marks are not similar in appearance, sound, meaning and overall commercial impression, and the first *DuPont* factor weighs strongly against a finding of likelihood of confusion.

D. Degree of Care in Purchasing

The fourth *DuPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *DuPont*, 476 F.2d at 1361). A heightened degree of care when making a purchasing decision may tend to minimize likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985) (because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED). Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay*, 396 F.3d at 1376. Where prospective consumers may span a spectrum of sophistication, we base our decision on the least sophisticated potential purchasers. *Look Cycle Int’l v. Kunshan Qiyue Outdoor Sports Goods Co.*, No. 92079409, 2024 TTAB LEXIS 289, at *13 (citing *Stone Lion*, 746 F.3d at 1325).

Opposer argued that the fourth *DuPont* factor weighs in favor of likelihood of confusion as the marks are used for low-priced goods that are likely to be purchased on impulse.¹⁹ Applicant counters that “[w]hen purchasing such [nutritional] supplements, consumers are likely to exercise a heightened degree of care due to the nature of the products involved.” Mr. Garrison testified:

Unlike everyday goods or snacks, functional supplements like Applicant’s TROOMY products can affect sleep, focus, and overall mental performance. As such, potential consumers exercise great care before making a purchasing decision and typically conduct research on the active ingredients, the dosage and concentration of ingredients in the products, the intended benefits, user feedback and reviews on effectiveness, and manufacturer credibility, among other considerations.²⁰

Neither the applications nor pleaded registration contains any limitation on the channels of trade or intended customers and, thus, the potential class of purchasers of Applicant’s and Opposer’s goods includes any consumer of dietary and nutritional supplements. There is evidence as to the price points of the parties’ goods (i.e., \$45.00 to \$230.00 for Opposer’s goods, and \$15.99 to \$34.99 for Applicant’s goods),²¹ but this evidence does not provide much, if any, guidance as to the degree of customer care. There is no direct evidence regarding the general pricing or purchasing habits of consumers of dietary and nutritional supplements. The fact that the parties’ goods are ingested into the human body for purposes of improving health and well-being,

¹⁹ 16 TTABVUE 17.

²⁰ Garrison Decl. ¶ 27 (13 TTABVUE 17); *see also* Moyal Decl. ¶¶ 31-32 (10 TTABVUE 7-8) (arguing Opposer’s and Applicant’s products are ingestible and designed to provide health benefits).

²¹ *See* Moyal Decl. ¶ 9 (10 TTABVUE 3-4); Garrison Decl. ¶ 28 (13 TTABVUE 17).

however, makes it “reasonable for us to assume that the relevant purchasers are likely to exercise some degree of care when it comes to buying and using” the goods, *In re Cook Med. Techs. LLC*, No. 77882876, 2012 TTAB LEXIS 496, at *21.

This *DuPont* factor weighs slightly against a finding of a likelihood of confusion.

E. Actual Confusion

Under the seventh and eighth *DuPont* factors, we consider the parties’ respective uses “such that we could make a finding as to the ‘length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *In re Guild Mortg. Co.*, No. 86709944, 2020 TTAB LEXIS 17, at *25; *see also DuPont*, 476 F.2d at 1361 (identifying seventh and eighth *DuPont* factors as “[t]he nature and extent of any actual confusion,” and “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion”).

“A showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion.” *Majestic Distilling*, 315 F.3d at 1317; *see also Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 762 (CCPA 1980) (“Actual confusion is entitled to great weight but only if properly proven.”). We are not persuaded by Opposer’s attempt to show actual confusion in this case. Opposer pointed to evidence of comments by a manufacturer, retail partner, someone at a tradeshow, and a friend to the effect that they thought Applicant’s mark is similar to Opposer’s.²² The statements relayed through Ms. Moyal are hearsay and

²² *See* Moyal Decl. ¶¶ 22-25 (10 TTABVUE 6-7).

therefore inherently unreliable. They are not admissible to show the mental state demonstrated by these comments. Fed. R. Evid. 802. On its face, all this evidence shows is that a few people thought that Applicant was trying to copy Opposer's mark; this does not demonstrate that these individuals were confused that Applicant was Opposer, or was affiliated with or sponsored by Opposer.

Of the text messages attached as exhibits to Ms. Moyal's declaration, only one (from an unknown person), on its face, demonstrates possible confusion, asking "This you guys? Looks like almost the same typeface."²³ Inquiries as to possible affiliation are not reliable evidence of actual confusion as they often indicate that the prospective customer had a reason to suspect that there are two different companies. *See Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, No. 92051006, 2014 TTAB LEXIS 95, at *67. The probative value of this evidence also is very limited because this individual was not called as a witness to testify and be cross-examined as to his or her potential confusion. Even if we gave weight to all of this imperfect evidence, confusion of only a few individuals is not persuasive evidence of actual confusion.

Applicant argued that there is no evidence of actual confusion, and thus these *DuPont* factors should be weighed against likelihood of confusion.²⁴ The absence of evidence of actual confusion, under the seventh *DuPont* factor, by itself is entitled to little weight in our likelihood of confusion analysis unless there also is evidence, under the eighth *DuPont* factor, that there has been a significant opportunity for

²³ Moyal Decl. Exh. Q (*id.* at 68).

²⁴ 17 TTABVUE 6-7.

actual confusion to have occurred. *Keystone Consol. Indus. v. Franklin Inv. Corp.*, No. 92066927, 2024 TTAB LEXIS 290, at *75-76 (citing cases). Thus, the absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by Applicant of its marks for a significant period of time in the same markets as those served by the Opposer under the pleaded mark. *Barbara's Bakery, Inc. v. Landesman*, No. 91157982, 2007 TTAB LEXIS 9, at *14. At best there has been only slightly more than three years during which the marks have been contemporaneously in the marketplace. We cannot conclude on the basis of this evidence that, if confusion were likely to occur, "circumstances have been such that it could be expected to have happened." *Gillette Canada Inc. v. Ranir Corp.*, No. 91082769, 1992 TTAB LEXIS 24, at *19.

On the issue of actual confusion, we would require better evidence. Therefore, the seventh and eighth *DuPont* factors are neutral.

F. Bad Faith

Opposer argued under the first *DuPont* factor that the "style, branding, and product presentation of the Applicant's products is very similar to that of Opposer's," clearly "show[ing] that Applicant has copied the look and feel of Opposer's marks."²⁵ In particular, Opposer pointed to similarities in stylization, packaging, and social media handles.²⁶ Applicant addressed Opposer's argument separately and made of

²⁵ 16 TTABVUE 13-14.

²⁶ *Id.*

record copious evidence to show that the elements it is accused of copying are common, but did not pin the argument to any particular *DuPont* factor.²⁷

We address the arguments regarding copying under the thirteenth *DuPont* factor, “any other established fact probative of the effect of use,” including a party’s bad faith in adopting a mark. *QuikTrip West, Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed. Cir. 2021). Establishing bad faith requires a showing that the applicant intentionally sought to trade on the opposer’s good will or reputation. *See Big Blue Prods. Inc. v. Int’l Business Machines Corp.*, No. 91081697, 1991 TTAB LEXIS 9, at *11-12. However, “an inference of ‘bad faith’ requires something more than mere knowledge of a prior similar mark.” *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1565 (Fed. Cir. 1987). A finding of bad faith must be supported by evidence of an intent to confuse, rather than mere knowledge of another’s mark or even an intent to copy. *See, e.g., Starbucks Corp. v. Wolfe’s Borough Coffee, Inc.*, 588 F.3d 97, 117 (2d Cir. 2009) (“[T]he only relevant intent is intent to confuse. There is a considerable difference between an intent to copy and an intent to deceive.”) (quotation omitted).

After careful consideration of Opposer’s arguments and the evidence on this factor, we are not persuaded that Applicant adopted its marks in bad faith or that Applicant’s intent weighs against Applicant in our likelihood of confusion analysis in this case. Although Applicant admitted that it knew about Opposer’s marks prior to

²⁷ 17 TTABVUE 23-24.

filing its applications for registration of the TROOMY marks,²⁸ there is no evidence of record indicating that Applicant knew of Opposer's TROOP products before adopting its TROOMY marks or that it copied Opposer's packaging or social media presence with intent to deceive.²⁹

In order to demonstrate that Applicant's marks were selected in bad faith, Opposer must have shown that Applicant intentionally sought to trade on Opposer's good will, and the record evidence is insufficient to support this contention. Here, the evidence more strongly suggests that Applicant adopted its marks as a play on words for "true me" and "shroom," and not to deliberately cause confusion with Opposer's TROOP marks. Thus, the thirteenth *DuPont* factor based on bad faith adoption is neutral.

G. Summary of the *DuPont* Factors

We must "weigh the *DuPont* factors used in [our] analysis and explain the results of that weighing." *Charger Ventures*, 64 F.4th at 1383-84. Opposer maintains that, if we have any doubt on this issue of likelihood of confusion, we should resolve that doubt in favor of the senior user.³⁰ In this case, however, we harbor no doubts.

²⁸ App. Resp. to RFA No. 12 (15 TTABVUE 33-34).

²⁹ App. Resp. to Int. No. 1 ("Bryan Garrison, VP of Alternative Products for the Applicant, first became aware of Opposer's marks through social media in June of 2022 after research and brand development for Applicant's TROOMY products had concluded.") (*id.* at 48); Garrison Decl. ¶¶ 29-30 (13 TTABVUE 17).

³⁰ 16 TTABVUE 10 (quoting from the TRADEMARK MANUAL OF PROCEDURE (TMPEP) § 1207.01(d)(1)).

Weighing the *DuPont* factors for which there is evidence and argument in this proceeding, we find confusion not likely. The parties' goods and trade channels are in-part legally identical, which weighs in favor of likelihood of confusion under the second and third *DuPont* factors. Opposer's mark, however, is slightly conceptually weak under the fifth and sixth factors. Most importantly, the parties' marks are not similar in appearance, sound, meaning and overall commercial impression under the first factor, which weighs strongly against likelihood of confusion. *Federated Foods*, 544 F.2d at 1103. The sophistication of consumers, the fourth *DuPont* factor, also weighs somewhat against likelihood of confusion. The remaining *DuPont* factors are neutral.

Accordingly, we find that Opposer has not proven, by a preponderance of the evidence, that confusion between its standard character mark TROOP in Reg. No. 7334349 and Applicant's TROOMY formative marks in Ser. Nos. 97591430, 97591423, 97834082, and 97834056 is likely.³¹

Decision

The opposition to Ser. Nos. 97591430, 97591423, 97834082, and 97834056 is **dismissed**.

³¹ Having failed to prove likelihood of confusion with Opposer's standard character mark and goods, we need not address confusion as to its pleaded stylized mark and goods. *See Max Cap*, 2010 TTAB LEXIS 1, at *5.