

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 26, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Under Armour, Inc.*  
*v.*  
*Valiant Praize Productions LLC*  
—

Cancellation No. 92082443  
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Douglas A. Rettew, Patrick J. Rodgers, and Maxime I. Jarquin of Finnegan,  
Henderson, Farabow, Garret & Dunner L.L.P., for Under Armour, Inc.

John V. Boyd, for Valiant Praize Productions LLC, appearing pro se.

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Before Larkin, Coggins, and Stanley,  
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Valiant Praize Productions LLC (“Respondent”) owns a Principal Register  
registration for the mark **KINGS ARMOR**, in standard characters, for:

Body suits for babies, adults, children, women, men; Coats  
for babies, adults, children, women, men; Dresses for  
babies, adults, children, women; Headwear for babies,  
adults, children, women, men; Hooded sweatshirts for  
babies, adults, children, women, men; Jackets for babies,  
adults, children, women, men; Pajamas for babies, adults,  
children, women, men; Pants for babies, adults, children,  
women, men; Shirts for babies, adults, children, women,  
men; Shoes for babies, adults, children, women, men;  
Shorts for babies, adults, children, women, men; Sweaters  
for babies, adults, children, women, men; Sweatpants for

babies, adults, children, women, men; Sweatshirts for babies, adults, children, women, men; T-shirts for babies, adults, children, women, men; Trousers for babies, adults, children, women, men; Woven shirts for babies, adults, children, women, men, in International Class 25.<sup>1</sup>

In its Petition for Cancellation,<sup>2</sup> Under Armour, Inc. (“Petitioner”) seeks to cancel Respondent’s registration on the grounds of (1) dilution by blurring under Trademark Act Section 43(c), 15 U.S.C. § 1125(c); and (2) priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on alleged prior common-law rights in the mark UNDER ARMOUR for apparel since 1996, and ownership of more than 20 registrations issued on the Principal Register for UNDER ARMOUR and ARMOUR-formative marks, including Registration No. 2279668 for the standard-character mark **UNDER ARMOUR** for:<sup>3</sup>

Clothing, namely, t-shirts, long sleeve shirts, mock turtle necks, hats, shorts, shirts, leggings, jersey[s], pants, headwear for winter and summer, under wear, tank tops (male and female), winter caps, sweat shirts/pull overs, womens bra, in International Class 25.<sup>4</sup>

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<sup>1</sup> Registration No. 6969742, issued January 31, 2023, from an application filed April 8, 2021, claiming October 5, 2022, as the date of first use anywhere and the date of first use in commerce.

<sup>2</sup> 1 TTABVUE (Petition for Cancellation). Citations to the record and briefs reference TTABVUE, the Board’s online docket system.

<sup>3</sup> We focus on Registration No. 2279668. *See e.g., New Era Cap Co. v. Pro Era, LLC*, 2020 TTAB LEXIS 199, at \*28 (TTAB 2020) (confining Section 2(d) analysis to fewer than all pleaded marks). If we find a likelihood of confusion as to the mark and goods in this registration, we need not find it as to other pleaded marks.

<sup>4</sup> Registration No. 2279668, issued September 21, 1999, from an application filed August 13, 1996; renewed. The registration describes the mark as a “typeset” mark which is the legal equivalent of a standard character mark. *See In re Viterra, Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012) (“standard character” marks were known as “typed” marks until 2003 when the preferred nomenclature changed).

In its Answer, Respondent “acknowledges that Petitioner has registered and used various marks containing the term ‘ARMOUR,’” but otherwise generally denies the salient allegations of the petition for cancellation.<sup>5</sup> Petitioner filed a trial brief, but Respondent did not.<sup>6</sup> For the reasons explained below, we grant the petition for cancellation under Trademark Act Section 2(d).<sup>7</sup>

### **I. Entitlement to a Statutory Cause of Action**

Although Respondent did not file a brief and, therefore, does not dispute Petitioner’s entitlement to invoke a statutory cause of action, such entitlement must still be established. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303-05 (Fed. Cir. 2020); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1373 (Fed. Cir. 2020) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014)). Petitioner may cancel Respondent’s registration if Petitioner’s interests fall within the zone of interests protected by the statute, and Petitioner has a reasonable belief in damage that is proximately caused by the

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<sup>5</sup> See 4 TTABVUE 2 (Answer); 9 TTABVUE 8 (Board order noting the Answer is a general denial). Respondent also asserted an affirmative defense of laches which was subsequently stricken. See 4 TTABVUE 3; 7 TTABVUE (motion to strike affirmative defense of laches); 9 TTABVUE 8-9 (Board order granting motion to strike). Respondent also pleaded that its mark has acquired distinctiveness and become well-known, see 4 TTABVUE 3, but this is not a true affirmative defense.

<sup>6</sup> Because Respondent, as the defendant, was under no obligation to submit a brief, we do not construe its failure to do so as a concession of the case. See, e.g., *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 TTAB LEXIS 383, at \*5 (TTAB 2022). Petitioner must still prove its entitlement to petition to cancel Respondent’s registration and grounds for cancellation by a preponderance of the evidence. *Id.* at \*5-6.

<sup>7</sup> As a result, we need not reach the ground of dilution by blurring. See *Multisorb Techs., Inc. v. Pactiv Corp.*, 2013 TTAB LEXIS 616, at \*2-3 & n.1 (TTAB 2013) (Board has discretion to decide only those claims necessary to enter judgment and dispose of a case; determination of registrability does not always require a decision on every pleaded claim.).

continued registration of Respondent's mark. *Corcamore*, 978 F.3d at 1303-04; *Spanishtown Enters., Inc. v. Transcend Res., Inc.*, 2020 TTAB LEXIS 481, at \*4 (TTAB 2020).

In view of Petitioner's ownership of valid and subsisting registrations which have been made of record,<sup>8</sup> and because Petitioner's registrations form the basis of a plausible Section 2(d) claim, Petitioner has established its entitlement to bring a statutory cause of action. Trademark Rule 2.122(d), 37 C.F.R. § 2.22(d); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000).

## II. Priority

"In a cancellation proceeding such as this one where both parties own registrations, priority is in issue." *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 TTAB LEXIS 347, at \*14 (TTAB 2019) (quoting *Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 2014 TTAB LEXIS 95, at \*48 (TTAB 2014)).

As mentioned above in footnote 3, we focus our Section 2(d) analysis on Petitioner's pleaded Registration No. 2279668. Because this registration is properly of record,<sup>9</sup> Petitioner may rely on the filing date of the underlying application as a constructive use date for purposes of priority. See Section 7(c) of the Trademark Act, 15 U.S.C. § 1057(c); see also, e.g., *Double Coin Holdings*, 2019 TTAB LEXIS 347, at \*14. Petitioner's registration issued from an application filed September 21, 1999. This date is more than 20 years prior to the April 8, 2021 filing date of the application

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<sup>8</sup> See Petitioner's First Notice of Reliance, 13 TTABVUE 9-119 (TSDR printouts of its pleaded registrations, with Registration No. 2279668 at 13 TTABVUE 15-19).

<sup>9</sup> See 13 TTABVUE 15-19.

underlying Respondent's registration, which is the earliest date on which Respondent is entitled to rely given the absence of any evidence of earlier use.<sup>10</sup> Accordingly, Petitioner has established priority with respect to the standard-character UNDER ARMOUR mark and the clothing goods set out in Registration No. 2279668.

### III. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”), *cited in B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311 (Fed. Cir. 2003).

Two key *DuPont* factors in every Section 2(d) claim are the first two factors regarding the similarity or dissimilarity of the marks and the similarity or dissimilarity of the goods. *Herbko Int'l v. Kappa Books*, 308 F.3d 1156, 1165 (Fed. Cir.

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<sup>10</sup> Although Respondent did not file a brief to argue earlier use of its mark, Respondent submitted as “evidence of KINGS ARMOR’s presence in commerce” two “order confirmations” from Printful, Inc. dated October 3, 2020, and showing the sale or fulfillment of five t-shirts, apparently to Respondent’s principal. 48 TTABVUE 32 (quote), 33-34 (receipts). However, because there is no accompanying testimony to authenticate, support, or otherwise explain these receipts, they have very little probative value. In any event, the receipts are dated more than 20 years after Petitioner’s September 21, 1999 priority date, and Respondent has not challenged Petitioner’s priority in its pleaded marks.

2002); *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.”). But we consider each *DuPont* factor for which there is evidence and argument. *Look Cycle Int’l v. Kunshan Qiyue Outdoor Sports Goods Co.*, 2024 TTAB LEXIS 289, at \*10 (TTAB 2024) (citing *In re Guild Mortgage Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019)).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented, *see, e.g., In re Charger Ventures LLC*, 64 F.4th 1375, 1381 (Fed. Cir. 2023), and any single factor may control a particular case. *Stratus Networks, Inc. v. UBTA-UBET Commc’ns, Inc.*, 955 F.3d 994, 998 (Fed. Cir. 2020). Despite Respondent’s failure to file a brief, we nonetheless assess likelihood of confusion under the relevant factors because the Board must still make the ultimate legal conclusion regarding likelihood of confusion based on the record. *See Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 929 (CCPA 1978).

**A. Identity of the Goods, Channels of Trade, and Classes of Consumers**

We start with the second, third, and part of the fourth *DuPont* factors, which respectively consider the similarity or dissimilarity and nature of the goods as described in the involved registrations, the similarity or dissimilarity of established, likely-to-continue trade channels, and the buyers to whom sales are made. *DuPont*, 476 F.2d at 1361; *Sabhnani v. Mirage Brands, LLC*, 2021 TTAB LEXIS 464, at \*20 (TTAB 2021). It is sufficient for a finding of likelihood of confusion if relatedness is

established between any of Petitioner’s identified goods and any item in the identification of goods in Respondent’s registration. *E.g., Bertini v. Apple Inc.*, 63 F.4th 1373, 1379-80 (Fed. Cir. 2023) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981)).

Respondent’s identification of goods includes pants, shorts, sweatshirts, and t-shirts (all for babies, adults, children, women, men – i.e., everyone), and these goods are identical to Petitioner’s pants, shorts, sweat shirts, and t-shirts.<sup>11</sup> And because these respective goods are identical, with no restrictions or limitations as to channels of trade or classes of customers, we presume the channels of trade and classes of purchasers for these goods are also identical. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (absent restrictions, the identified goods, if identical, “are presumed to travel in the same channels of trade to the same class of purchasers”).

In view of the identity of the goods, trade channels, and classes of consumers, the second, third, and part of the fourth *DuPont* factors weigh heavily in favor of a conclusion of a likelihood of confusion.

## **B. Purchasing Conditions**

The remaining portion of the fourth *DuPont* factor considers the “conditions under which . . . sales are made, i.e. ‘impulse’ v. careful, sophisticated purchasing.” *DuPont*,

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<sup>11</sup> Additional items are encompassed within the respective identifications and are therefore legally identical; for example, Respondent’s broadly worded “headwear” encompasses Petitioner’s “hats,” “headwear for winter and summer,” and “winter caps.”

476 F.2d at 1361. Petitioner argues that its goods are relatively inexpensive, sold for as little as \$9.00, and may be subject to impulse purchases.<sup>12</sup>

The clothing items listed in Petitioner's and Respondent's registrations are not limited in any way as to purchasers, conditions of sale, quality, or price. We must therefore assume that they are sold at all prices points and to all types of buyers. *See In re Embiid*, 2021 TTAB LEXIS 168, at \*42 (TTAB 2021) (items of clothing "are general consumer goods that are marketed to the general population and worn by virtually everyone") (internal quotes and citations omitted). This includes both the discriminating purchaser as well as the ordinary bargain hunter. *See e.g., In re Embiid*, 2021 TTAB LEXIS 168, at \*44-45; *Sock It to Me v. Fan*, 2020 TTAB LEXIS 201, at \*24-25 (TTAB 2020); *New Era Cap*, 2020 TTAB LEXIS 199, at \*48 ("Ordinary consumers of headwear and clothing are likely to exercise only ordinary care, and given the lack of price restrictions in the identifications, they may even buy inexpensive items on impulse.").

We must consider the degree of care that would be exercised by the least sophisticated potential consumer. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014). Because consumers of the clothing items at issue would exercise only ordinary care, this portion of the fourth *DuPont* factor is neutral.

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<sup>12</sup> 55 TTABVUE 46; 14 TTABVUE 11 (¶ 27 of the Declaration of Teresa Oles, Petitioner's Vice President of Global Consumer Operations).



### C. Strength of Petitioner's UNDER ARMOUR Mark

Before comparing the parties' marks, we consider the strength or weakness of Petitioner's UNDER ARMOUR mark, because a determination of its strength or weakness helps inform us as to its scope of protection. *DuPont*, 476 F.2d at 1361 (the fifth factor is "[t]he fame of the prior mark (sales, advertising, length of use)" and the sixth factor is "[t]he number and nature of similar marks in use on similar goods"); *see also Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) ("Two of the *DuPont* factors (the fifth and sixth) consider strength.").

When evaluating the strength of a mark, we look at the mark's inherent strength based on the nature of the term itself and its commercial strength in the marketplace, *Spireon*, 71 F.4th at 1362 (citing *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353 (Fed. Cir. 2010) (measuring both conceptual and marketplace strength), as well as "[t]he number and nature of similar marks in use on similar goods," which may constrict the scope of protection. *See Made in Nature, LLC v. Pharmavite LLC*, 2022 TTAB LEXIS 228, at \*15-16 (TTAB 2022) (quoting *DuPont*, 476 F.2d at 1361). "[T]he strength of a mark is not a binary factor, but varies along a spectrum from very strong to very weak." *In re Coors Brewing Co.*, 343 F.3d 1340, 1345 (Fed. Cir. 2003). *See also Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 1325 (Fed. Cir. 2017). The proper standard is the mark's "renown within a specific product market," *Joseph Phelps Vineyards*, 857 F.3d at 1325, and "is determined from the viewpoint of consumers of like products," *id.* at 1735.

## 1. Conceptual Strength

“Conceptual strength is a measure of a mark’s distinctiveness . . . .” *Spireon*, 71 F.4th at 1362 (citing *In re Chippendales USA*, 622 F.3d at 1353). “The inherent or conceptual strength of [Petitioner’s UNDER ARMOUR] mark is not seriously at issue. [Petitioner’s] mark is inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.” *New Era Cap*, 2020 TTAB LEXIS 199, at \*29; *see also* 15 U.S.C. § 1057(b) (registration is “prima facie evidence of the validity of the registered mark”). The UNDER ARMOUR mark suggests that Petitioner’s clothing provides a protective layer worn beneath another layer of clothing, and the record is devoid of any “third-party registrations [for] similar goods [that might negatively] bear on [the] mark’s conceptual strength.”<sup>13</sup> *Spireon*, 71 F.4th at 1363 (citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)).

## 2. Commercial Strength

Commercial strength is “the marketplace recognition value of the mark,” asking “whether consumers in fact associate [it] with a unique source and can be shown by, for instance, exclusive use of a mark in the marketplace, advertising and marketing, and sales.” *Id.* (cleaned up). Commercial strength may also be measured by “widespread critical assessments; notice by independent sources of the products identified by the marks; and the general reputation of the products . . . .” *Monster*

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<sup>13</sup> In addition, in an effort to prevent erosion over time of its conceptual strength, Petitioner engages in active enforcement of its UNDER ARMOUR mark. Oles Decl. ¶ 392, and Ex. 211 (14 TTABVUE 137-38; 33 TTABVUE 103-133).

*Energy Co. v. Lo*, 2023 TTAB LEXIS 14, at \*30 (TTAB 2023) (citations omitted). “A mark ‘with extensive public recognition and renown deserves and receives more legal protection than an obscure or weak mark.’” *Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1319 (Fed. Cir. 2018) (quoting *Kenner Parker Toys Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 353 (Fed. Cir. 1992)).

Petitioner asserts that its UNDER ARMOUR mark is strong, famous, and entitled to a broad scope of protection.<sup>14</sup> In support of this assertion, Petitioner submitted the testimony declarations (with corroborating exhibits) of Teresa Oles, Petitioner’s Vice President of Global Consumer Operations; and Katie Graham, Petitioner’s Senior Director of Financial Planning and Analysis for North American Wholesale and Distributors.<sup>15</sup> These witnesses’ uncontradicted testimony establishes that:

- Petitioner has used the mark UNDER ARMOUR on shirts since 1996, and on a full line of apparel, including hats, sweatshirts, shorts, and pants, since 1999;<sup>16</sup>
- Petitioner has sold billions of dollars of clothing under its marks, including extensive sales of UNDER ARMOUR-branded clothing (including shirts, sweatshirts, pants, shorts, and headwear) in the last five years;<sup>17</sup>

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<sup>14</sup> See 55 TTABVUE 32-39.

<sup>15</sup> Ms. Oles’ declaration (with exhibits 1-214) discusses, among other things, the history, notoriety, use, promotion, and commercial success of Petitioner’s UNDER ARMOUR mark and ARMOUR and ARMOUR-formative marks. 14-37 TTABVUE (public) and 38-41 TTABVUE (confidential).

Ms. Graham’s declaration discusses Petitioner’s substantial revenues and advertising for products (including, inter alia, pants, shorts, sweatshirts, shirts, and headwear) offered with Petitioner’s UNDER ARMOUR, ARMOUR, and ARMOUR-formative marks. 52 TTABVUE (public) and 43 TTABVUE (confidential).

To the extent we describe confidential information filed under seal, we do so in general terms only.

<sup>16</sup> Oles Decl. ¶ 19 (14 TTABVUE 8).

<sup>17</sup> Graham Decl. ¶¶ 19-23, 31-40, 45 (52 TTABVUE 12-15, 17-20, 21-22).

- Petitioner’s UNDER ARMOUR-branded clothing is sold in Petitioner’s own stores, in other retail stores such as Academy Sports & Outdoors, Bass Pro Shop, Bloomingdale’s, Cabela’s, Dick’s Sporting Goods, Dunham’s, Foot Locker, Finish Line, Hibbett Sports, Kohl’s, Macy’s, Modell’s, Nordstrom, REI, The Army and Air Force Exchange Service, and in various hotel stores and gyms across the United States;<sup>18</sup>
- Petitioner spends extensive sums annually on advertising and promoting its UNDER ARMOUR clothing, across virtually every type of digital, broadcast, and print media, including social media websites, nationally broadcast television programs, magazines, newspapers, popular movies, video games, stadium signage, and prominent billboards (including in Times Square in New York City);<sup>19</sup>
- Petitioner has promoted its UNDER ARMOUR clothing through endorsements by hundreds of athletes and celebrities across multiple sports and professions including Michael Phelps, Tom Brady, Stephen Curry, Gisele Bündchen, Lindsey Vonn, Misty Copeland, Ray Lewis, Juan Soto, Andy Murray, and Dwayne “The Rock” Johnson;<sup>20</sup>
- Petitioner has received numerous awards for its commercial success in connection with the development of its innovative clothing and marketing and branding achievements, and in 2015 and 2016 was ranked by Forbes as the fourth most valuable sports brand in the world;<sup>21</sup> and
- Petitioner and its UNDER ARMOUR mark and clothing have received extensive unsolicited media coverage since 1997 in such publications as The Wall Street Journal, Time Magazine, Forbes, AdAge, Sports Illustrated, Fortune Magazine, and many others.<sup>22</sup>

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<sup>18</sup> Oles Decl. ¶ 319 (14 TTABVUE 121).

<sup>19</sup> Graham Decl. ¶¶ 46-50 (52 TTABVUE 22-24); Oles Decl. ¶¶ 344, 373 (14 TTABVUE 125, 131).

<sup>20</sup> Oles Decl. ¶ 325 (14 TTABVUE 122).

<sup>21</sup> Oles Decl. ¶ 386 (14 TTABVUE 135-36).

<sup>22</sup> Oles Decl. ¶¶ 32, 350-52, 387-88, and Ex. 22 (14 TTABVUE 12-13, 126-27, 136; 23 and 35-35 TTABVUE). *See also* Oles Decl. Ex. 212, a chart summarizing more than 200 “representative sample[s]” of media mentions since 2001 (33 TTABVUE 134-158); Petitioner’s Second Notice of Reliance (42 TTABVUE).

Overall, the evidence relating to the success and renown of the UNDER ARMOUR mark indicates that it is commercially very strong. The length of use, the sales and advertising figures, consumer exposure through media, athletic sponsorships, popular movies, and video games, and the other indirect evidence of consumer recognition, reflect substantial commercial strength of Petitioner's UNDER ARMOUR mark. And the record is devoid of evidence of any third-party use of ARMOUR-formative marks for clothing that would bear negatively on the mark's commercial strength. *See, e.g., New Era Cap*, 2020 TTAB LEXIS 199, at \*36 (“Applicant did not provide evidence of any third-party use of marks consisting of or comprised of the [shared term] for these goods, and thus no evidence of commercial weakness.”). On this record, we find that Petitioner has established that its pleaded registered UNDER ARMOUR mark used in connection with clothing “falls on the much higher end of the commercial strength spectrum from very strong to very weak, amongst a significant portion of the relevant U.S. consumers.” *Id.* at \*35 (cleaned up).

### **3. Summary on the Strength of UNDER ARMOUR**

As discussed above, Petitioner's UNDER ARMOUR mark is inherently distinctive and conceptually appears only to “hint[] at some attribute of the goods.” *Spireon*, 71 F.4th at 1364 (citing 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:64 (5th ed. 2023)). Respondent introduced no evidence of any conceptual weakness of Petitioner's UNDER ARMOUR mark. We find the mark is conceptually strong.

Petitioner's testimony and evidence points to significant commercial success in selling and marketing its goods, including hats, pants, shirts, shorts, and sweatshirts,

under the UNDER ARMOUR mark, and significant recognition by third parties of clothing items featuring the UNDER ARMOUR mark. Respondent introduced no evidence of any commercial weakness of Petitioner's UNDER ARMOUR mark. We find the mark is commercially very strong.

Considering both inherent and commercial strength, we find Petitioner's mark UNDER ARMOUR, as applied to its identified goods, to be very strong and entitled to a broad scope of protection on the spectrum of "very strong to very weak" marks. *Joseph Phelps Vineyards*, 857 F.3d at 1325 (quoting *In re Coors Brewing*, 343 F.3d at 1345). Accordingly, the fifth *DuPont* factor weighs heavily in favor of a conclusion of a likelihood of confusion, and the sixth *DuPont* factor is neutral.

#### **D. Similarity of the Marks**

We now turn to the first *DuPont* factor which considers the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361. "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 TTAB LEXIS 170, \*13 (TTAB 2018) (quoting *In re Davia*, 2014 TTAB LEXIS 214, \*4 (TTAB 2014), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019); *accord, Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

"The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression

such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong*, 901 F.3d at 1373 (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, at 1368 (Fed. Cir. 2012)). Where the goods at issue are in-part identical, as they are in this proceeding, the degree of similarity between the marks necessary to support a conclusion of likely confusion declines. *Id.* Additionally, as the strength of a mark increases, the degree of similarity between the marks necessary to support a conclusion of likely confusion also declines. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 1369 (Fed. Cir. 2002); *cf. Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 353 (Fed. Cir. 1992) (finding likelihood of confusion between FUNDOUGH and PLAY-DOH) (“A strong mark . . . casts a long shadow which competitors must avoid,” and “[t]here is no excuse for even approaching the well-known trademark of a competitor . . . and . . . all doubt as to whether confusion, mistake, or deception is likely is to be resolved against the newcomer, especially where the established mark is one which is famous.”).

Petitioner’s mark is UNDER ARMOUR, and Respondent’s mark is KINGS ARMOR. The marks share the second word ARMOR, or ARMOUR in the British spelling,<sup>23</sup> which we find more dominant than the first words of the respective marks as ARMO(U)R is significant in creating the commercial impression of each mark. The

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<sup>23</sup> “Armour” is the British variant of “armor.” Both are defined, inter alia, as “[a] defensive covering, as of metal, leather, or synthetic materials, worn to protect the body against weapons.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (ahdictionary.com, accessed March 22, 2025). “The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format or have fixed regular editions.” *In re Nextgen Mgmt., LLC*, 2023 USPQ2d 14, at \*9 n.5 (TTAB 2023).

respective first terms UNDER and KINGS modify and draw attention to the word ARMO(U)R, thus reinforcing the significance of that term. *See, e.g., Monster Energy*, 2023 TTAB LEXIS 14, at \*45 (the first word in a mark does not always create the strongest impression).

“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*, 2021 TTAB LEXIS 464, at \*39 (quoting *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018)).

Both marks consist of two words, and the marks are similar in appearance and sound to the extent the second word in each mark is ARMO(U)R. The marks are also similar in connotation and commercial impression due to the shared word ARMO(U)R.

The leading words UNDER and KINGS modify the word ARMO(U)R and the overall connotation of the respective marks, but not so significantly as to make the respective overall commercial impressions divergent. In the context of identical types of clothing, the addition of UNDER to ARMOUR connotes a defensive covering beneath a layer of clothing, while the addition of KINGS to ARMOR connotes a defensive covering worn by or on behalf of a sovereign. Both marks imply defensive coverings worn in battle. There is no evidence here, or other reason to find based on the nature of the identical clothing goods, that the word ARMO(U)R has one meaning



when used in Petitioner's mark, but a different meaning when used in Respondent's mark. *See In re Embiid*, 2021 TTAB LEXIS 168, at \*28.

Given the identity of the goods and the strength of Petitioner's mark, each of which reduces the degree of similarity between the marks necessary to support a conclusion of likely confusion, we find UNDER ARMOUR and KINGS ARMOR are more similar than dissimilar in terms of appearance, sound, and commercial impression. The first *DuPont* factor therefore weighs in favor of a conclusion of a likelihood of confusion.

#### **E. Actual Confusion and Contemporaneous Use**

Under the seventh and eighth *DuPont* factors, we consider the nature and extent of any actual confusion, in light of the length of time and conditions under which there has been contemporaneous use of the parties' subject marks. *In re Guild Mortg. Co.*, 2020 TTAB LEXIS 17, at \*25 (TTAB 2020); *see also DuPont*, 476 F.2d at 1361.

Petitioner argues that there has been no opportunity for actual confusion to occur.<sup>24</sup> The absence of reported instances of confusion is meaningful only if the record establishes appreciable and continuous use by Respondent of its mark for a significant period of time in the same markets as those served by Petitioner under its mark. *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 2010 TTAB LEXIS 40, at \*50 (TTAB 2010), *aff'd*, 637 F.3d 1344 (Fed. Cir. 2011); *Barbara's Bakery Inc. v. Landesman*, 2007 TTAB LEXIS 9, at \*14 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred). Because there is no evidence regarding the extent of use of

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<sup>24</sup> 55 TTABVUE 47.

Respondent's mark, the record does not provide sufficient contextual information on the specific conditions of potentially concurrent use of the respective similar marks that could give rise to actual confusion. In the absence of evidence of a meaningful opportunity for confusion to have occurred, we consider the seventh and eighth *DuPont* factors to be neutral. See *Cunningham v. Laser Golf*, 222 F.3d at 949 (approving Board finding that "it could not conclude there had even been an opportunity for actual confusion").

#### **F. Summary**

In view of the identity of the goods, and the presumed identity of the trade channels and classes of consumers, the second, third, and part of the fourth *DuPont* factors weigh heavily in favor of a conclusion of a likelihood of confusion. The portion of the fourth *DuPont* factor concerning purchasing conditions is neutral. Because the UNDER ARMOUR mark is conceptually strong and commercially very strong, it is entitled to a broad scope of protection and so the fifth *DuPont* factor also weighs heavily in favor of a conclusion of a likelihood of confusion. The first *DuPont* factor weighs in favor of a conclusion of likely confusion because the marks are more similar than dissimilar in terms of appearance, sound, and commercial impression. Further, because the goods are in-part identical, and Petitioner's mark is strong, the degree of similarity between the parties' marks required to support a conclusion of likelihood of confusion decreases. The sixth, seventh, and eighth *DuPont* factors are neutral. We find that confusion is likely between Respondent's mark KINGS ARMOR and Petitioner's mark UNDER ARMOUR, both for clothing.

IV. Decision

The petition to cancel is granted under Section 2(d).<sup>25</sup>

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<sup>25</sup> As mentioned above in footnote 7, we need not reach the ground of dilution.