

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 8, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Salvation Nutraceuticals Inc.

Serial No. 97015288

Jeffery M. Lillywhite of Kimball Anderson, for Salvation Nutraceuticals Inc.

Yat Sye Lee, Trademark Examining Attorney, Law Office 107,
Leslie Bishop, Managing Attorney.

Before Shaw, Dunn and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Salvation Nutraceuticals Inc., seeks to register the standard-character mark KUDO on the Principal Register for “Gummy vitamins; Nutritional supplements in the form of gummies” in International Class 5.¹

The Trademark Examining Attorney has refused registration under Section 2(d)

¹ Application Serial No. 97015288 (“the Application”) was filed on September 7, 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 first use in commerce since at least as early as September 7, 2021.

TTABVUE and Trademark Status and Document Retrieval (“TSDR”) citations in this opinion refer to the docket and electronic file database for the involved application and are to the downloadable .PDF version of the documents.

of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, in connection with the identified goods, is likely to cause confusion with the mark KUDOS, in typed characters, for "Hair shampoo, hair conditioner, soap for hands, face and body, skin/body moisturizer, skin/body lotion, shaving preparations, body/hand cream, skin cleansing cream, and bath gels/oil" in International Class 3.²

After the refusal was made final, Applicant filed a notice of appeal and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal proceeded. We affirm the refusal.

I. Preliminary Evidentiary Issue

"As an initial matter, the examining attorney objects to the applicant's improper submission of new evidence with its appeal brief" which "consists of website screenshots captured on August 17, 2023 showing the registrant's products (Applicant's Exhibit A) and a list of search results conducted on August 9, 2023 on the USPTO's TESS³ database (Applicant's Exhibit B)."⁴ As the Examining Attorney points out, citing Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), "[t]he record in an application should be complete prior to the filing of an appeal."⁵ "Evidence should not be filed with the Board after the filing of a notice of appeal." Rule 2.142(d).

We sustain the objection and give no consideration to the new evidence submitted

² Registration No. 2363076, issued June 27, 2000; renewed.

³ "TESS" refers to the USPTO's Trademark Electronic Search System. The TESS database was retired on November 30, 2023, and replaced by a cloud-based trademark search system. See www.uspto.gov/trademarks/search.

⁴ 8 TTABVue 2 (Examining Attorney's Brief).

⁵ *Id.*

with Applicant's appeal brief.

II. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused 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), quoted in *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, *2 (Fed. Cir. 2023).

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. duPont deNemours & 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, 135 S. Ct. 1293, 191 L. Ed. 2d 222, 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 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). “The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In*

re i.am.symbolic, LLC, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

A. Similarity or Dissimilarity 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. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) *aff'd* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

Here, the marks are virtually identical. Applicant's mark is KUDO, which means "praise," as does Registrant's mark KUDOS, the plural form of KUDO.⁶ We have frequently noted that a plural version of a word does not alter the word's meaning and does not avoid a likelihood of confusion. *See, e.g., Swiss Grill Ltd., v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2011 n.17 (TTAB 2015) ("it is obvious that the virtually identical marks [the singular and plural of SWISS GRILL] are confusingly similar"); *Weider Publ'ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014) (finding the singular and plural forms of SHAPE to be essentially the same mark).

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

⁶ 4 TTABVue 10-20 (Reconsideration Letter).

B. Similarity or Dissimilarity of the Goods

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration” *DuPont*, 177 USPQ at 567. A proper comparison of the goods “considers whether ‘the consuming public may perceive [the respective goods 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)).

Applicant’s goods, again, are “Gummy vitamins; Nutritional supplements in the form of gummies,” and Registrant’s goods are “Hair shampoo, hair conditioner, soap for hands, face and body, skin/body moisturizer, skin/body lotion, shaving preparations, body/hand cream, skin cleansing cream, and bath gels/oil.”

The Examining Attorney contends that Applicant’s and Registrant’s goods are related “because vitamins and nutritional supplements are often made and sold by companies that also make and sell skincare preparations and personal care products for the hair, hands, face, and body.”⁷ In support of her contention, she provides Internet evidence showing approximately twenty examples by at least eighteen different companies that offer for sale the goods of both Applicant and Registrant under the same mark,⁸ including the following representative examples:

- (1) Pacifica (pacificabeauty.com), which offers the sale of hair care products,

⁷ 8 TTABVUE 6-7 (Examining Attorney’s Brief).

⁸ June 15, 2022 Office Action, TSDR 40-54; December 2, 2022 Final Office Action, TSDR 8-68; 4 TTABVUE 21-158 (Reconsideration Letter).

cleansers for the face and body, skin/body moisturizers and lotions, and gummy supplements under the mark PACIFICA, e.g.:



;9

(2) Tula (tula.com), which offers the sale of face, skin/body moisturizers, lotions, creams and gummy vitamins under the mark TULA, e.g.:



;10

(3) Ulta (ulta.com), which offers the sale of shampoos, conditioners and gummy vitamins under the marks TGIN, HAIRTAMIN, GRANDE COSMETICS, and BETTER NOT YOUNGER, e.g.:

⁹ June 15, 2022 Office action, TSDR 44, 50.

¹⁰ *Id.* at 53-54.



;¹¹

(4) Vegamour (vegamour.com), which offers the sale of shampoos, conditioners, and gummy supplements under the mark VEGAMOUR:



;¹²

(5) Hello Bello (hellowello.com), which offers the sale of shampoos, conditioners, cleaners for face and body, skin/body moisturizers, lotions, and gummy supplements and vitamins under the mark HELLO BELLO:



;¹³

¹¹ *Id.* at 18.

¹² *Id.* at 25, 30.

¹³ *Id.* at 36, 40.

(6) Love Beauty and Planet (lovebeautyandplanet.com), which offers the sale of shampoos, conditioners, soaps for hands and body, skin/body moisturizers, lotions, and gummy supplements and vitamins under the mark HELLO BELLO:



(7) Sephora (sephora.com), which offers the sale of shampoos, conditioners, cleaners for face, skin/body moisturizers and lotions, and gummy supplements under the mark SUNDAY II SUNDAY:



(8) Blue Mercury (bluemercury.com), which offers the sale of skincare lotions/serums and gummy supplements under the mark HIGHERDOSE:

¹⁴ *Id.* at 43, 48.

¹⁵ *Id.* at 53-54.



;¹⁶

(9) Bath & Body Works (bathandbodyworks.com), which offers the sale of shampoos, conditioners, soaps for hands and body, skin/body moisturizers, lotions, body/hand creams, bath gels, and gummy vitamins under the mark MOXY:



;¹⁷ and

(10) Blu Atlas (bluatlas.com), which offers the sale of shampoos, conditioners, cleansers for face and body, skin/body moisturizers, shaving preparations, and gummy supplements:

¹⁶ *Id.* at 6-, 67.

¹⁷ *Id.* at 27.




.¹⁸

Internet evidence may be probative of relatedness. *Made in Nature, LLC v. Pharmavite, LLC*, 2022 USPQ2d 557, at *46 (TTAB 2022) (third-party websites promoting sale of both parties' goods showed relatedness); *In re Embiid*, 2021 USPQ2d 577, at *28-29 (TTAB 2021) (evidence of third-parties offering goods of both applicant and registrant pertinent to relatedness of the goods); *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355-56 (TTAB 2015) (relatedness found where Internet evidence demonstrated goods commonly emanated from the same source under a single mark). The foregoing evidence provided by the Examining Attorney is sufficient to show that the goods of both Applicant and Registrant are sometimes offered under the same mark by the same retailers and thus are related. *See In re Detroit Athl. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir 2018) (crediting relatedness evidence that third parties use the same mark for the goods at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard*, 62 USPQ2d at 1004 (stating that evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

¹⁸ *Id.* at 49-50.

The Examining Attorney also submitted at least twenty use-based third-party registrations to show relatedness of Applicant's gummy vitamins and supplements on the one hand, and Registrant's goods of hair shampoo, hair conditioner, soap for hands, face and body, skin/body moisturizer, skin/body lotion, shaving preparations, body/hand cream, skin cleansing cream, or bath gels/oil, on the other.¹⁹ The following examples are representative:²⁰

Registration No.	Mark	Relevant Goods
5059147	BERKLEY JENSEN	Vitamins, nutritional supplements, and probiotic gummies
		Liquid hand soap
5254712	L'VIVA	Dietary supplements, vitamin supplements, vitamins, gummy supplements
		Moisturizers
5746855		Nutritional supplements, vitamins, gummy vitamins
		Antibacterial soap, disinfectant soap
5016961	NOURISH BEAUTE	Vitamins, nutritional supplements, gummies
		Shampoo-conditioners, hair shampoo
5192291	SEEDLOCK	Dietary supplements; gummy vitamins
		Facial moisturizers; body lotion

¹⁹ 4 TTABVue 159-237 (Reconsideration Letter).

²⁰ *Id.* at 159-90.

5723866	GOOD GUY	Gummy vitamins; vitamins; vitamin supplements
		Hair shampoos and conditioners
5760975		Vitamins; vitamin supplements, gummy vitamins
		Shaving preparations
5735516	GROW GIRL	Vitamin supplements, gummy vitamins
		Shampoo-conditions; hair shampoo, medicated shampoo
5875643	AGROZEN	Nutritional supplements in the form of gummies
		Bars of soap, perfumed soap, skin soap
5802689	KATS BOTANICALS	Dietary supplements, nutritional supplements in the form of gummies
		Skin soap

Third-party registrations have some probative value to the extent they may serve to suggest that such goods are of a type which emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, n.6 (TTAB 1988).

In view of the foregoing, we find that Applicant's and Registrant's goods are related.

Applicant submits various arguments against relatedness of the goods, but none are availing. For example, Applicant argues that the Board, in *Vital Pharm., Inc. v.*

Kronholm, 99 USPQ2d 1708 (TTAB 2011), “determined that nutritional supplements are not related to cosmetics, perfumes and fragrances” because there was “no evidence that nutritional supplements and cosmetics, perfumes and fragrances would be sold in the same department or be situated near each other” or “evidence that the goods are complementary or would otherwise be purchased together, such that consumers would encounter both types of products in the course of a single shopping trip.”²¹

However, the *Vital Pharmaceuticals* decision is inapposite. As the Examining Attorney points out, the decision in that case “was based on the finding that the opposer did not provide any evidence of relatedness and basically failed to meet its burden of proof.”²²

There is no evidence of record showing that applicant’s goods and opposer’s services are related in such a manner that they could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. ... Moreover, there is no basis, such as evidence that the same companies make nutritional supplements and cosmetics, perfumes and fragrances, or that they sell such products under a single mark, upon which we could conclude that consumers would assume that these different products emanate from a single source.

Vital Pharm., 99 USPQ at 1712. As the Examining Attorney further notes, the opposer in that case “failed to submit any evidence other than electronic copies of its registrations with its notice of opposition, and did not file a brief.”²³ *Id.* at 1708-09.

²¹ 6 TTABVUE 7 (Applicant’s Brief).

²² 8 TTABVUE 8 (Examining Attorney’s Brief).

²³ *Id.*

Here, in contrast, there is ample evidence in the nature of third-party use and third-party registrations that Applicant's nutritional supplements and vitamins and Registrant's cosmetics are related.

Applicant also provides a listing of twenty-two cases from various courts around the country that Applicant asserts "make clear that the TTAB has allowed concurrent registration for similar or even identical marks for similar or related goods or services."²⁴ Notably, of the twenty-two cases, only one is a TTAB case. More importantly, Applicant has not demonstrated that the facts and evidence in those cases are analogous to the fact and evidence in this proceeding. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1742 (TTAB 2014) ("[P]rior cases, precedential or not, are only useful to the extent that the facts in the prior cases are somewhat analogous to the facts in the current case.") (citations omitted). As the Examining Attorney rightly notes:

On questions regarding the potential relatedness of goods and marketplace evidence, the Board must rely on the evidentiary record before it, rather than the holding of a case based on a different evidentiary record. Each case is decided on its own facts, and each mark stands on its own merits. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (citing *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Contrary to the applicant's assertion, the evidence of record does demonstrate that the goods in the instant application and registration are related.²⁵

Applicant argues, in addition, that "the parties' respective goods are in different

²⁴ 6 TTABVUE 8-10 (Applicant's Brief).

²⁵ 8 TTABVUE 9 (Examining Attorney's Brief).

international classes which is prima facie evidence that the goods were not seen as related by the drafters of the identification,” and cites 37 C.F.R. § 2.85(f), which provides that “[c]lassification schedules shall not limit or extend the applicant’s rights...”²⁶ Applicant’s argument is misplaced because classification is simply a matter of convenience for the USPTO. As the Examining Attorney notes:

The fact that the Office classifies goods or services in different classes does not establish that the goods and services are unrelated under Trademark Act Section 2(d). *See* TMEP §1207.01(d)(v). The determination concerning the proper classification of goods or services is a purely administrative determination unrelated to the determination of likelihood of confusion. *In re Detroit Athletic Co.*, ... 128 USPQ2d [at] 1051 ... (citing *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 975, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993)).²⁷

Applicant argues further that “[c]ompanies typically separate their topical goods from their consumable goods,” which “prevents consumers from believing that the consumable goods somehow contain similar ingredients or characteristics as the topical products, which can contain toxins or other undesirable ingredients to consume and allows the companies to market the products with different message.”²⁸ As support, Applicant points to printouts from the cosmetic company Avon’s website it provided showing that Avon “sells its topical products under the Anew or FarmX brands and sells its supplements under the Re:tune brand.”²⁹ However, one example of selectively chosen pages of the website of one company is insufficient to show that

²⁶ 6 TTABVUE 11 (Applicant’s Brief).

²⁷ 8 TTABVUE 11 (Examining Attorney’s Brief).

²⁸ 6 TTABVUE 11 (Applicant’s Brief).

²⁹ *Id.*; October 11, 2022 Response to Office Action, TSDR 6-7.

companies, in general, do not provide both Applicant's and Registrant's goods together under one mark. To the contrary, the third-party use and registration evidence of record, discussed above, suggests that such goods are often offered together under the same mark by the same company. Furthermore, while Avon may have various marks for its goods, its website shows that they are all offered under the company's AVON house mark.

Still further, Applicant argues that there is insufficient evidence to show the goods are substantially related. According to Applicant:

[T]here are 170,558 trademarks in class 3. As such, the Office action has relied on about 0.02% of the cases to show that the products are "substantially related." The live trademarks are fairly even in classes 3 and 5. Applicant, for example, found 167,774 total marks in class 5 and 151,552 total marks that include "vitamins" or "supplements" in the descriptions of live marks. With the similar total numbers, Applicant asserts that the number of cross-over cases between classes 3 and 5 should be higher to be deemed "substantially related" or something more to prove that the goods are related.

Until recently, the USPTO would allow marks to coexist in classes 3 and 5 with identical or highly similar marks. In fact, the USPTO actually has a long and consistent practice of not finding dietary and nutritional supplements to be related or similar to skin care products. But recently, many marks are being rejected by presenting extrinsic evidence that improperly extends the rights of registrants in an ex parte proceeding based on being so-called substantially related. And the pendulum has swung too far.³⁰

Much of Applicant's argument, however, is unsupported by the evidence. Although Applicant refers to printouts from the Office's TESS database that it attached as Exhibit B to its brief, we excluded that evidence as untimely. Even if we had not, a

³⁰ 6 TTABVUE 16-17 (Applicant's Brief).

two-page printout of the first 50 listings of pending applications for the marks that include goods in Class 5 hardly suffices to show what the USPTO has or has not found related, now or in the past.

Applicant complains that it “was not allowed to present extrinsic evidence of actual use by the registrant to show that the goods are not substantially related,” specifically, that Registrant is a manufacturer of guest amenities for hotels, which do not provide supplements and vitamins for their guests.³¹ “On one side the USPTO is using extrinsic evidence (examples outside of the application and registration) to prove the goods are substantially related yet ignoring any germane evidence of the actual use to show that they are not related goods.”³² As Applicant explains, it “presented evidence of actual use of the Registrant’s mark in an effort to prevent the USPTO from improperly extending the rights of the mark to include ‘gummy vitamins; nutritional supplements in the form of gummies,’ and not to limit the goods described in the registration or present any restrictions on the goods in Class 3.”³³

As the Examining Attorney notes, however, “applicant’s repeated insistence that it is not ‘trying to place restrictions on the registration’ appears to be based on a fundamental misunderstanding of how relatedness is determined in a likelihood of confusion case in an *ex parte* proceeding.”³⁴ Regardless of how Applicant characterizes its argument, as the Board explained in *In re Cont’l Graphics Corp.*, 52 USPQ2d 1374,

³¹ *Id.* at 18.

³² *Id.* at 14.

³³ *Id.*

³⁴ 8 TTABVUE 11 (Examining Attorney’s Brief).

1376 (TTAB 1999) (citing *In re Trackmobile*, 15 USPQ2d 1152, 1153 (1990)), “likelihood of confusion determination must be made on the basis of the goods or services as identified in the application and the registration, rather than on the basis of what the evidence might show the applicant’s or registrant’s actual goods or services to be.” *See also Edward Lifesciences Corp. v. Vigilanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010) (extrinsic evidence may not be used “to restrict or limit the goods” in the cited registration); *In re Thor Tech*, 90 USPQ2d at 1636 (“[W]e may not limit or restrict the [goods] listed in the cited registration based on extrinsic evidence.”).

The second *DuPont* factor weighs in favor of finding a likelihood of confusion.

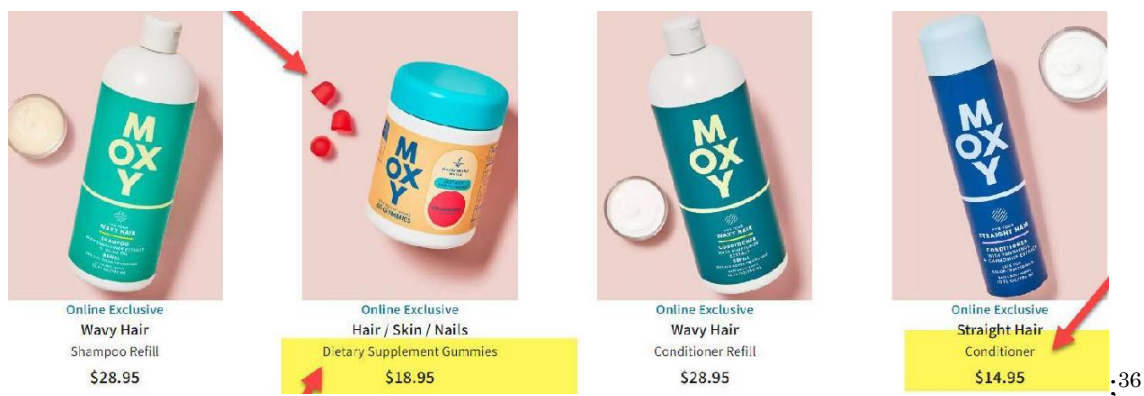
C. Similarity or Dissimilarity of the Trade Channels

We turn now to the third *DuPont* factor, which considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. As with our comparison of the goods, the basis for comparison of the trade channels is the identification of goods set forth in the Application and cited registration, “regardless of what the record may reveal as to the particular nature of an applicant’s [or registrant’s] goods, [or] the particular channels of trade or the class of purchasers to which sales of the goods are directed.” *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Here, both Registrant’s and Applicant’s identifications are unrestricted as to trade channels. Moreover, in the absence of specific limitations in Applicant’s and Registrant’s respective identifications, we must assume that the products set forth in the identifications are sold in all normal channels of trade for goods of that type.

DeVivo v. Ortiz, 2020 USPQ2d 10153, at *39-41 (TTAB 2020) (“[A]bsent an explicit restriction in the application, the identified goods in the application must be presumed to move in all channels of trade that would be normal for such goods and to all usual prospective purchasers for goods of that type.”).

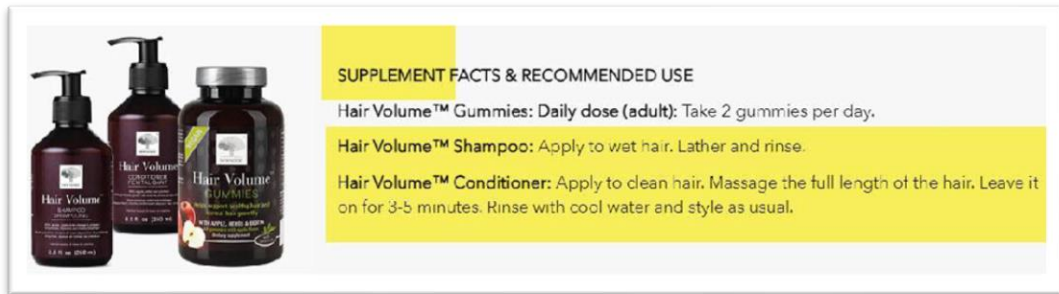
For similarity of trade channels, the Examining Attorney relies on the same evidence discussed above for relatedness of the goods, including the webpage evidence from retailers Avon, Honest, Pacifica, Tula, Ulta, Vegamour, Hello Bello, Love Beauty & Planet, Sephora, Blue Mercury, Bath & Body Works, Blu Atlas, Consult Beaute, Gimme, Love Wellness, New Nordic, Oase, and ZAS Naturals.³⁵ Almost half of them show promoting of both Applicant’s and Registrant’s goods on the same page. For example, Bath & Body Works promotes shampoo, conditioner, and dietary gummy supplements from its Moxy collection together on one page:



New Nordic offers “The Gummy Beauty Bundle,” which comes with shampoo, conditioner, and gummy supplements:

³⁵ See note 9 supra.

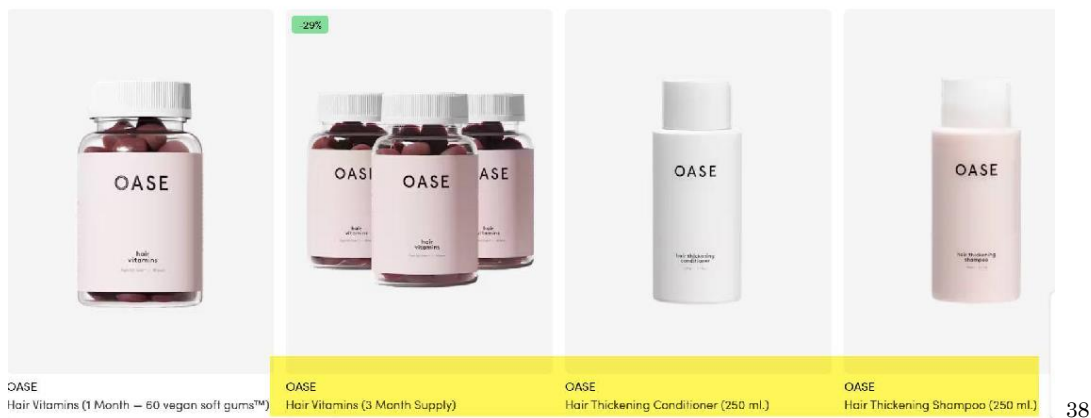
³⁶ 4 TTABVUE 27 (Reconsideration Letter) (emphasis added by Examining Attorney).



;³⁷ and

Oase promotes Applicant's and Registrant's goods as "Often bought together":

Often bought together



.³⁸

This evidence supports a finding that these goods are offered in at least one common channel of trade, that is, the websites operated by the third-party specialty retailers, often on the same page.

The third *DuPont* factor weighs in favor of finding a likelihood of conclusion.

D. Conclusion

The goods and trade channels overlap, and the marks are virtually identical in appearance, sound, connotation and commercial impression. The first, second, and third *DuPont* factors thus weigh in favor of a finding of likelihood of confusion, with

³⁷ *Id.* at 121 (emphasis added by Examining Attorney).

³⁸ *Id.* at 132 (emphasis added by Examining Attorney).

no factors weighing against a likelihood of confusion. Accordingly, we find Applicant's standard-character mark KUDO for "Gummy vitamins; Nutritional supplements in the form of gummies" is likely to cause confusion with the mark KUDOS for "Hair shampoo, hair conditioner, soap for hands, face and body, skin/body moisturizer, skin/body lotion, shaving preparations, body/hand cream, skin cleansing cream, and bath gels/oil" in Registration No. 2363076.

Decision: The refusal to register is affirmed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).