

This Opinion is Not a
Precedent of the TTAB

Mailed: September 4, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re NOMVDIC Corporation
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Serial Nos. 97087812, 97087849, 97088315, 97088393¹
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for NOMVDIC Corporation.

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Before Kuhlke, Heasley and Myles,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

¹ On February 13, 2024, the Board granted the Examining Attorney's motion to consolidate these appeals. 12 TTABVUE. We have considered all arguments and evidence filed in each case. Citations to TTABVUE throughout the decision are to the Board's public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVUE electronic case file and the second represents the page number(s).

Citations to the examination record refer to the USPTO's online Trademark Status and Document Retrieval system (TSDR). References to the record are to the prosecution history in Application Serial No. 97087812, unless otherwise noted.

Nomvdic Corporation (“Applicant”) seeks registration on the Principal Register for the standard character marks NOMVDIC² and NOMVDIC-INNOVATION,³ and the


composite marks  NOMVDIC⁴ and  NOMVDIC⁵ (“NOMVDIC marks”) for the following goods ultimately identified as:

Projectors, namely, multimedia projectors, cinematographic projectors, picture projectors, video projectors; transparency projection apparatus, slide projection apparatus and photograph projection apparatus; projection screens; computer hardware; computer monitors; downloadable computer game programs; computer keyboards; computer memory devices; computers, in International Class 9.

The Trademark Examining Attorney refused registration of Applicant’s mark in each application under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the

² Application Serial No. 97087812 was filed on October 22, 2021 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), alleging an intent to use the mark in commerce.

³ Application Serial No. 97087849 was filed on October 22, 2021 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), alleging an intent to use the mark in commerce.

⁴ Application Serial No. 97088315 was filed on October 22, 2021 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), alleging an intent to use the mark in commerce. The application includes the following description of the mark: The mark consists of the word “NOMVDIC” in stylized font in the color black beneath an inverted triangle in the color black with a bar design extending horizontally through the center of the inverted triangle, the left side of the bar design in the color blue gradually fading into the color purple on right side of the bar. In addition, the colors black, blue and purple are claimed as a feature of the mark.

⁵ Application Serial No. 97088393 was filed on October 22, 2021 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), alleging an intent to use the mark in commerce. On March 15, 2023, the Office accepted Applicant’s amendment to allege use, filed on March 13, 2023, alleging first use on January 1, 2022 and first use in commerce on September 2022. The application includes the following description of the mark: The mark consists of the words “NOM” and “DIC” in stylized font in the color black and a design element between the stylized words “NOM” and “DIC” the design element being an inverted triangle in the color black with a bar design extending horizontally through the center of the inverted triangle, the left side of the bar design in the color blue gradually fading into the color purple on right side of the bar. In addition, the colors blue, purple and black are claimed as a feature of the mark.

ground that Applicant's marks, when used in connection with the identified goods, except for "downloadable computer game programs," so resemble the registered standard character mark NOMADIC GEAR (with "GEAR" disclaimed) for "mounting devices for photographic equipment; tripods; monopods for cameras and cell phones; camera straps; cases for photographic apparatus," in International Class 9, as to be likely to cause confusion.⁶

When the refusals were made final, Applicant appealed. At the Examining Attorney's request, the applications were remanded to permit the newly assigned Examining Attorney to review the record and to supplement the evidence of record. Thereafter, proceedings were resumed, including time for Applicant to file a supplemental brief, which it did in Application Serial No. 97088393.

We reverse the refusal to register as to each application.

I. Evidentiary Issues

The material attached to Applicant's briefs appears to be material submitted during prosecution of the application. *In re Info. Builders Inc.*, Application Serial No. 87753964, 2020 WL 2094122, at *2 n.4 (TTAB 2020) (attaching previously submitted evidence to an appeal brief is unnecessary and impedes efficient disposition of the

⁶ Registration No. 6004814, issued on the Principal Register on March 10, 2020. The refusal under Section 2(d) based on Registration No. 5233658 for the mark NOMADIC for "virtual reality software for playing computer games," in International Class 9, was withdrawn in view of the cancellation of that registration. Ex. Atty. Brief, 13 TTABVUE 3. In view of the cancellation, the refusal against Applicant's "downloadable computer game programs" was withdrawn. *Id.*

appeal by the Board), *appeal dismissed*, No. 20-1979 (Oct. 20, 2020).⁷ We consider the material submitted during the prosecution. The material submitted for the first time attached to the Supplemental Brief in Application Serial No. 97088393 is untimely. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *In re ADCO Industries-Technologies, L.P.*, Application Serial No. 87545258, 2020 WL 730361, at *3 (TTAB 2020) (evidence submitted for the first time in supplemental trial brief not considered). Accordingly, the evidence and argument based on that evidence have not been considered.

II. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re Chatam Int’l Inc.*, 380 F.3d 1340,1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated

⁷ As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the Westlaw (WL) database. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (“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.”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)).

A. Relatedness of the Goods, Trade Channels and Classes of Consumers

When considering the goods, trade channels and classes of consumers, we must make our determinations based on the goods as they are identified in the applications and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407-08 (Fed. Cir. 1997). *See also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). They need not be identical or even competitive to find a likelihood of confusion. *On-Line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000). The issue is not whether the goods will be confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”). They only need to be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the

same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, Opposition No. 91117739, 2007 WL 1431084, at *10 (TTAB 2007)).

The Examining Attorney argues that Applicant’s projectors and related accessories are similar or complementary in terms of purpose to Registrant’s camera accessories and that the record shows the “same entity commonly manufactures, produces, or provides the relevant good[s] and markets the goods under the same mark.” Ex. Atty. Brief, 13 TTABVUE 16.

The record includes several examples from third-party websites of various camera-related accessories and projectors offered under the same mark. For example, CANON offers projectors and camera cases under the CANON mark (8 TTABVUE 59-65); Sony offers projectors and camera backpacks under the SONY mark (8 TTABVUE 66-69); KODAK offers projectors, projectors with built-in stands and camera cases under the KODAK mark (8 TTABVUE 83-86); and DECOBRANDS offers computer keyboards, monitors, camera cases and camera straps under the DECO GEAR mark (8 TTABVUE 88-92). These examples show the goods at issue marketed and sold under a single trademark. It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 1336 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, Opposition No. 91196527, 2014 WL 1827031, at *12 (TTAB 2014).

Turning to the channels of trade and classes of purchasers, if the application and cited registration describe goods broadly, and there is no limitation as to their nature, type, channels of trade, or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all normal channels of trade, and that they are available to all usual classes of purchasers. *See, e.g., Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013). The examples discussed above show the respective goods traveling in the same trade channel and being offered to the same classes of consumers, members of the general public interested in purchasing projector and camera equipment and related accessories.

The evidence is sufficient to show that these goods are related and travel in the same channels of trade offered to the same classes of consumers, members of the general public, who could be expected to exercise only ordinary care in making their purchases. We find that these factors weigh in favor of likely confusion.

B. Weakness of the Word NOMADIC

Applicant argues that the word NOMADIC in Registrant's mark, NOMADIC GEAR, is weak and in support, points to three third-party registrations for marks that incorporate that word or a similar word.

"In determining strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition." *Bell's Brewery, Inc. v. Innovation Brewing*, Opposition No. 91215896, 2017 WL 6525233, at *6 (TTAB 2017) (citing *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, Cancellation No.

92051006, 2014 WL 1390528, at *18 (TTAB 2014)); *see also In re Chippendales USA Inc.*, 622 F.3d 1346, 1353 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength”); 2 J. Thomas McCarthy, *MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION* § 11:80 (5th ed. May 2024 update) (“The first enquiry is for conceptual strength and focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”). The fifth *DuPont* factor considers “[t]he fame of the prior mark (sales, advertising, length of use);” 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; *Made in Nature, LLC v. Pharmavite LLC*, Opposition No. 91223352, 2022 WL 2188890, at *11 (TTAB 2022).

In the context of an ex parte proceeding, the fame of a mark under the fifth *DuPont* factor is generally not addressed, and it is not here. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1207.01(d)(ix) (2023). However, we note that because the cited mark is registered on the Principal Register, it is entitled to a statutory presumption that the mark is valid and distinctive. 15 U.S.C. § 1057(b).

Turning to the third-party registrations, alone they are “not evidence of what happens in the market place or that customers are familiar with them” because they are not evidence of the extent of use in the marketplace. *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406 (CCPA 1973); *In re Morinaga Nyugyo K. K.*,

Application Serial No. 86338392, 2016 WL 5219811, at *8 (TTAB 2016) (“[T]hird-party registrations standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences.”). Third-party registrations, however, are relevant to the conceptual strength of a mark because they “show the sense in which a mark is used in ordinary parlance,’ that is, some segment that is common to both parties’ marks may have ‘a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak[.]” *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) (quoting *Juice Generation, Inc. v. GS Enters., LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015)); see also *In re Box Solutions Corp.*, Application Serial No. 76267086, 2006 WL 1546499, at *2 (TTAB 2006) (“[T]hird-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry”).

The marks and goods for the third-party registrations are shown below:

NOMATIC for computer software for operating and controlling food production and sterilization apparatus that use microwave radiation in the production of phytochemicals, phenolic compounds and bioactive compounds as well as in the sterilization of foods, food ingredients and food products

NOMADIC WAX for musical sound recordings and audio-visual recordings featuring prerecorded music, and

NOMADIC TRIBE downloadable computer application software for mobile phones, namely, software for use in database management in the field of travel⁸

To have probative value, the third-party registrations should be for similar marks on similar goods. *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1363 (Fed. Cir. 2023); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372 (Fed. Cir. 2005). For our purposes, we are determining the scope of protection for the registered mark, i.e., its weakness when used in connection with cameras and camera accessories. The proffered third-party registrations for musical sound recordings and computer software are not sufficiently similar goods. Even including Applicant's projectors and other goods, the goods listed in the third-party registrations have no probative value on the question of weakness in connection with the goods still relevant to this proceeding.⁹

The evidence does not support a finding that the mark is conceptually or commercially weak and this factor is neutral.

C. Similarity/Dissimilarity of the Marks

We compare Applicant's marks in their entireties as to "appearance, sound, connotation and commercial impression." *Palm Bay Imps.*, 396 F.2d at 1371 (quoting *DuPont*, 476 F.2d at 1361. "Similarity in any one of these elements may be sufficient

⁸ December 5, 2022 Response to Office Action TSDR 11-13.

⁹ Regarding Applicant's argument involving the now cancelled registration for NOMADIC for "virtual reality software for playing computer games" asserting that if it could coexist with the cited registration NOMADIC GEAR, "then consumers can certainly distinguish between Applicant's 'NOMVDIC' mark and both marks of the cited registrations..." App. Brief, 4 TTABVUE 9, that registration and goods are no longer subject to this proceeding and the arguments no longer germane.

to find the marks confusingly similar.” *In re Inn at St. John’s*, Application Serial No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018), *aff’d mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, Application Serial No. 85497617, 2014 WL 2531200, at *2 (TTAB 2014)).

The Examining Attorney argues that Applicant’s NOMVDIC marks and NOMADIC GEAR are highly similar because they both begin and end with NOM and DIC, the additional word GEAR in Registrant’s mark is “descriptive wording that does not significantly change the commercial impression” of the mark, and “the single letter difference between the applied-for mark and the word NOMADIC in the registered mark does not obviate the likelihood of confusion because the evidence in the record establishes that consumers are accustomed to seeing the letters A and V used interchangeably as inverted letters.” Ex. Att. Brief, 13 TTABVUE 5.

Applicant argues that:

The Examining Attorney presumes that (1) Applicant’s Mark is an intentional misspelling of the word NOMADIC; (2) consumers will recognize that the letter ‘V’ is intended to resemble the letter ‘A’ and (3) that consumers will therefore flip the letter “v” to a letter “A” to perceive that mark as “nomadic.” It is noted that the letter “N” could also conceivably be rotated clockwise or counterclockwise to resemble a letter “Z” and the letter “M” could be flipped upside down to resemble a letter “W.” However, the fact that individual letters have the potential to be manipulated to adopt a different orientation does not change the nature of the letters themselves and there is no motivation to arbitrarily rotate the letters to adopt a different configuration. ... Applicant has not placed an abstract design between the letters “NOM” and “DIC” such that a consumer would have to try and guess what letter the design is intended to represent. Rather, Applicant plainly positions the letter “V” between “NOM” and “DIC”

and since a “V” is a true letter and it is clearly displayed as the letter “V” in Applicant’s Mark, there would be no motivation to arbitrarily turn it into an entirely different letter. Even if a consumer were to mentally flip the “V” of Applicant’s Mark, it does not become a letter “A”- it would simply an inverted letter “V.” The use of the letter “V” by the Applicant to create a unique and fanciful term “NOMVDIC” is believed by the Examining Attorney to be simply trivial and unable to avoid confusion between the cited registrations.¹⁰

The Examining Attorney submitted printouts from a few third-party websites showing use of a V to replace the letter A and use of an inverted V to replace the letter

A. A few examples are displayed below:

Pvris

[Article](#) [Talk](#)

From Wikipedia, the free encyclopedia

Not to be confused with Paris (band).

Pvris (pronounced "Paris" and stylized **PVRIS**) is an American **pop rock** act formed by multi-instrumentalist, singer, songwriter, and producer **Lyndsey Gunnulfsen**. Over her decade-long career, Gunnulfsen has released three studio LPs: *White Noise* in November 2014 featuring the hits "You and I", and "My House", *All We Know of Heaven, All We Need of Hell* in 2017 featuring "What's Wrong", and *Use Me* in 2020 featuring "Hallucinations".

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¹⁰ App. Brief, 4 TTABVUE 8.

¹¹ October 16, 2024 Subsequent Final Office Action, 8 TTABVUE 10 (Wikipedia.com).

¹² *Id.* at 57 (www.blvckwomxnworldwide.org).



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In addition, the Examining Attorney argues that Applicant’s marketing of its products reinforces the meaning “nomad” pointing to an excerpt from Applicant’s website that reads: “NOMVDIC is a brand founded by a group of people with the spirit of exploration.”¹⁷

The Examining Attorney’s position that Applicant’s and Registrant’s marks are similar depends entirely on whether or not consumers will necessarily replace the V with an A and perceive the fanciful term NOMVDIC as the word NOMADIC. The Examining Attorney has submitted some evidence of use of such a misspelling technique, PVRIS for PARIS, BLVCK for BLACK. In addition, the Examining Attorney submitted evidence of A spelled without the bar so that it could look like an inverted V. However, the evidence does not show a widespread use of this spelling

¹³ *Id.* at 27 (www.novasourcepower.com).

¹⁴ *Id.* at 36 (www.epicbrokers.com).

¹⁵ *Id.* at 44 (pinnaclesolutionsinc.com).

¹⁶ *Id.* at 51 (arcbound.com).

¹⁷ December 14, 2022 Final Office Action TSDR 17-20.




approach and we find it to be insufficient to make a determination that consumers are likely to take NOMVDIC as NOMADIC when viewing the mark in connection with the projectors and other goods. On this record, we find consumers are more likely to take NOMVDIC as is and accept the fanciful term.

As to the excerpt from Applicant's website, although it suggests Applicant's products maybe used outside of the home, and while such goods may be relevant to understanding the perceived connotation and commercial impression of the word NOMVDIC, given our finding consumers will take the word as it appears, this additional evidence is not sufficient to turn the word into NOMADIC.

Further, as Applicant points out, its website does not include the word "nomadic" and consumers searching for Applicant's website "would have to type in 'NOMVDIC' to access Applicant's webpage." App. Brief, 4 TTABVUE 10. Applicant continues that even "if consumers were to make such a mental leap, it does not transform the nature of the mark itself [which is] fanciful, with no known meaning and which is phonetically distinct from the word 'nomadic' as used in the cited registrations." *Id.*

Taking the marks as they appear, NOMVDIC and NOMADIC have different connotations and commercial impressions, and the other matter in the marks (addition of the word GEAR in Registrant's mark, and the addition of the word INNOVATION and the triangle design and stylization in three of Applicant's marks) present differences in sound, appearance, connotation and commercial impression.

We find the dissimilarities in the marks outweigh their similarities. In view thereof, the dissimilarity of Applicant's marks NOMVDIC, NOMVDIC-


INNOVATION,  and , and Registrant's mark NOMADIC GEAR weighs against a finding of likelihood of confusion.

D. Length of Time Without Evidence of Actual Confusion

In Application Serial No. 97088393 Applicant filed a timely Supplemental Brief and presented argument under the eighth *DuPont* factor that the marks have been in concurrent use “for over 23 months.” App. Supp. Brief, 11 TTABVUE 8 (Serial No. 97088393). Applicant further argues:

As mentioned in Appellant's May 26, 2023 brief and as supported by the Allegation of Use filed on March 13, 2023 in connection with the subject application, Applicant's mark has been in use in interstate commerce in the United States since at least as early as January 1, 2022. The “NOMADIC GEAR” and “Nomadic” marks have claimed first use dates of May 5, 2015 and April 20, 2017 respectively. The marks have all therefore been in concurrent use for over 23 months. The Examining Attorney believes that confusion is likely between the marks, yet during the 23 months that the marks have been coexisting in U.S. commerce, there have been no known instances of consumer confusion reported. ... Applicant has not been made aware of any instances of confusion between its mark and either of the cited registrations with respect to any confusion as to the source of the goods in any manner whatsoever.

The parties have been enjoying concurrent use in the marketplace without noted confusion among consumers, and it is not believed that registration of Applicant's mark would in any way jeopardize the concurrent use that the parties presently enjoy.¹⁸

¹⁸ App. Supp. Brief, Serial No. 97088393, 11 TTABVUE 7-8.

It is well settled that the relevant test is likelihood of confusion, not actual confusion; thus, it is unnecessary to show actual confusion to establish likelihood of confusion. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1309 (Fed. Cir. 2018).

The eighth *DuPont* factor examines “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont* 476 F.2d at 1361-62. For this analysis we look at actual market conditions. Here, there is no evidence to show actual meaningful market overlap.¹⁹ In addition, concurrent use for 23 months is not an appreciable amount of time. *See Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 121 (1st Cir. 2006).

Finally, in this ex parte context, there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion. *See, e.g., In re Opus One, Inc.*, Application Serial No. 75722593, 2001 WL 1182924, at *7 (TTAB 2001) (“The fact that an applicant in an ex parte case is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred.”) (citations omitted); *In re Wilson*, Application Serial No. 75285881, 2001 WL 58395, at *5 (TTAB 2001) (“[I]nasmuch as we have heard from neither registrant nor the Highland Orange Association in this appeal,

¹⁹ Consideration of Applicant’s untimely evidence would not change the result.

we cannot conclude that, in fact, no instances of actual confusion ever occurred.”) We find the factor to be neutral.

E. Conclusion

In balancing the relevant factors for which there has been evidence and argument in these appeals, *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023), we find the goods related and the trade channels overlap. However, we find the marks are dissimilar and that this factor is dispositive. *Kellogg Co. v. Pack-Em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) (“[W]e know of no reason why, in a particular case, a single du Pont factor may not be dispositive.”). We conclude on this record there is no likelihood of confusion.

Decision: The refusal to register Applicant’s mark under Trademark Act Section 2(d) is reversed in each application.