

This Opinion is Not a  
Precedent of the TTAB

Mailed: February 9, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Adorama, Inc.*

—  
Serial No. 97263050

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Daniel A. Thomson and John M. Skeriotis of Emerson Thomson Bennett, LLC, for  
Adorama, Inc.

Katherine Mahoney, Trademark Examining Attorney, Law Office 127,  
Mark Pilaro, Managing Attorney.

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Before Heasley, Thurmon and Allard, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Adorama, Inc. (“Applicant”) seeks registration on the Principal Register of the mark TURNSTILE AUDIO, in standard characters, with “AUDIO” disclaimed, for “microphones, headphones, in-ear monitors not for medical purposes, audio speakers in the nature of studio monitor speakers, and other related audio equipment used in recording, live sound, post-production, and broadcasting, namely, sound recording apparatus,” in International Class 9.<sup>1</sup> The Examining Attorney finally refused

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<sup>1</sup> Application Serial No. 97263050 was filed on February 11, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion based on the mark TURNSTYLE, registered in standard characters, for “carrying cases, namely, shoulder bags, and messenger bags, all designed for carrying one or more of cameras, photographic equipment, digital audio players, cell phones, satellite telephones, personal digital assistants, electronic reading devices, tablet computers, and computer accessories,” in International Class 9.<sup>2</sup>

The appeal is fully briefed. We affirm the refusal to register.

### **I. Applicable Law**

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, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). *See also, In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence or argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). “Whether a likelihood of confusion exists between an applicant’s

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Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at \*2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s appeal brief appears at 4 TTABVUE and the Examining Attorney’s brief appears at 6 TTABVUE. Citations to the application record are to the downloadable .pdf version of the United States Patent and Trademark Office’s Trademark Status & Document Retrieval (“TSDR”) system.

<sup>2</sup> Reg. No. 4523255, issued April 29, 2014, renewed.

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). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods or services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil Co.*, 26 USPQ2d at 1688 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (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.”).

## II. Likelihood of Confusion – Analysis

### A. Similarity of the Marks

To evaluate the similarity of the marks, we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (citing *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) (citing *In re Davia*, 110 USPQ2d, 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019). *Accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

The marks are similar in appearance. Applicant’s mark is TURNSTILE AUDIO, with the word “audio” disclaimed. Consumers are not familiar with the Office’s disclaimer practice, but the word audio describes a feature of Applicant’s goods and therefore, is less likely to be recognized and remembered as a source identifier. The first element of Applicant’s mark is dominant, because it is first seen and heard, and because it is the only distinctive element of the mark.

The cited mark is TURNSTYLE, which looks similar to the TURNSTILE element of Applicant’s mark. These terms sound identical, so when the goods are asked for, it

is impossible to know if the word used is “turnstile” or “turnstyle.” The visual and aural similarity of the marks increases the risk of confusion.

The marks are less similar in meaning for those consumers who notice that the cited mark includes the word “style.” When used with the word “turn,” the cited mark is likely to mean some type of change or shift in style. Applicant’s mark, TURNSTILE AUDIO, conjures up images of a turnstile<sup>3</sup> and audio, perhaps turnstiles with music or some other combination of the two terms. These are not similar meanings, but we cannot assume all consumers will recognize the small difference in the spelling of the cited mark. For those consumers who just hear the two marks, the meanings will be more similar. There is some ambiguity concerning the meaning consumers are likely to ascribe to the cited TURNSTYLE mark, and we lack evidence of the commercial impressions created by the marks. For these reasons, we cannot determine the full impact the meanings and commercial impressions will have on the likelihood of confusion. The marks are similar in sight and sound, and those facts alone increase the likelihood of confusion.

Applicant argues that the additional “AUDIO” element of its mark is enough to eliminate similarity in the marks.<sup>4</sup> We disagree for the reasons given above. We further note that our focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See*

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<sup>3</sup> Applicant provides the following definition of a turnstile: “A gate having projecting bars that can be rotated to allow one person at a time to pass through, often having a mechanism to allow passage only in one direction or to require payments, as by means of a token.” 4 TTABVUE 8 (citing thefreedictionary.com).

<sup>4</sup> *Id.* at 9-10.

*Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). The term TURNSTILE, as used in Applicant's mark, is more likely than the term AUDIO to be recalled by consumers or relied upon as a source identifier. With nearly identical dominant elements, the marks are similar enough to increase the likelihood of confusion.

The first *Dupont* factor weighs in favor of likelihood of confusion.

**B. Similarity of the Goods and Established, Likely to Continue, Trade Channels and Likely Purchaser Care**

We evaluate the second, third and fourth *DuPont* factors together because these factors are based on the goods identified in the Application and the cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any goods encompassed in the identification of goods in a particular class in an application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at \*6 (TTAB 2019); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015). In addition, the goods need only be sufficiently related that a consumer would be likely to assume, upon encountering goods marketed under the marks at issue, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, 84 USPQ2d 1482, 1492 (TTAB 2007).

The cited Registration identifies carrying cases for various electronic items, while the Application identifies certain “audio equipment used in recording, live sound, post-production, and broadcasting, namely, sound recording apparatus.” These are distinct goods, but they are clearly complementary in nature. For example, while the cited Registration does not list microphones, headphones or in-ear monitors, it is clear that these goods (taken from the Application) can be carried in cases.

The fact that the goods are complementary, however, does not automatically show that consumers are accustomed to seeing both type of goods sold under a single mark. That is the key question. Sock and shoes are complementary, but unless some socks and shoes are often sold under the same trademark, the complementary nature of the goods would not necessarily affect the likelihood of confusion. If, however, there was evidence that socks and shoes are often sold under the same brand, that would show that consumers are accustomed to seeing such practices, and that would increase the likelihood of confusion.

The Examining Attorney submitted evidence showing that third parties sell both carrying cases and at least some of the audio products identified in the Application. We focus here on the “microphones, headphones and in-ear monitors” identified in the Application and on carrying cases for such goods. We review some of this evidence below.






Sony sells microphones, headphones and in-ear monitors, as illustrated by the screenshots submitted by the Examining Attorney.

**SONY** Professional Products Solutions Where to Buy Support Contact Us Promotions

Professional Products Audio Professional Audio Wired and Wireless Microphones Wired Microphones

## Wired Microphones

Our range of wired microphones and accessories are designed for quality-critical applications in broadcasting, theater and field productions.

 <p><b>Handheld Microphones</b></p> <ul style="list-style-type: none"><li>• Sensitive with emphasized response for voice</li><li>• Robust with low handling noise</li></ul>	 <p><b>Shotgun Microphones</b></p> <ul style="list-style-type: none"><li>• Highly directional response rejects off-axis sound</li><li>• Accurately picks up sound far from the camera</li><li>• Mono and stereo models for field and studio production</li></ul>	 <p><b>Lavalier and Headset Microphones</b></p> <ul style="list-style-type: none"><li>• Compact, miniature and flat-shape microphones</li><li>• Optimized speech quality</li></ul>
		

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<sup>5</sup> Office Action dated April 27, 2022 at 15. Professional Sony audio goods, including microphones, are also in the record. *Id.* at 16-17.

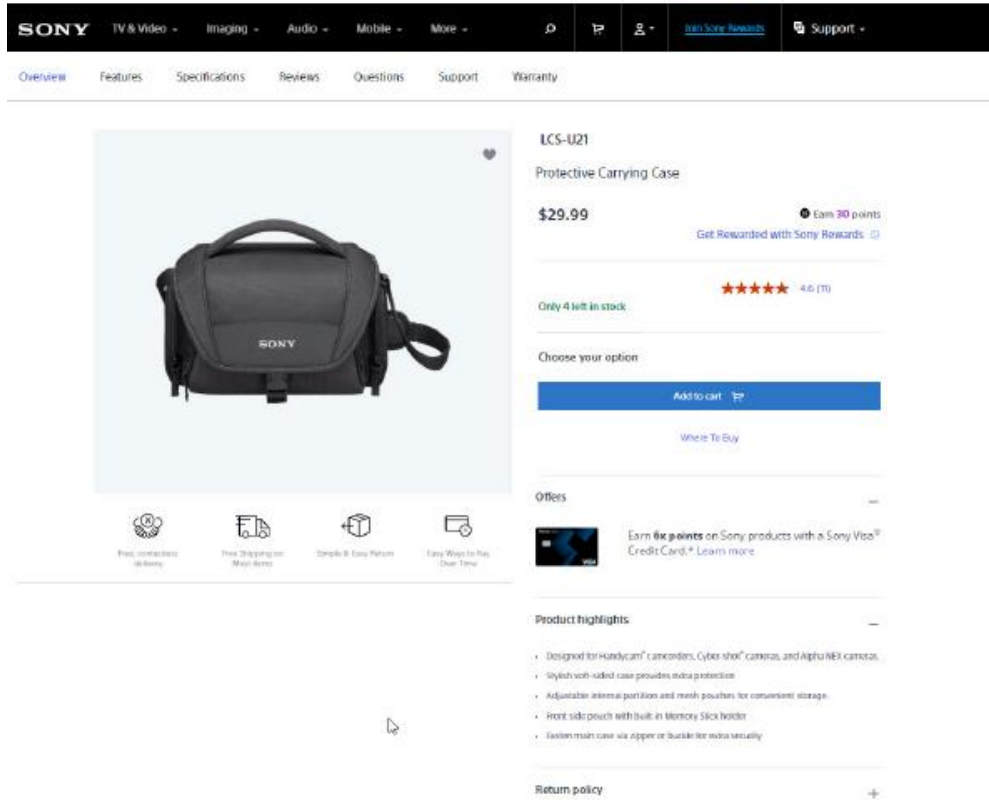


The screenshot displays the Sony website's audio products section. At the top, the Sony logo and navigation menu are visible. Below the header, the page title is "Audio - 163 products". A filter sidebar on the left lists various categories such as "Offers & Sales", "Price", "Type", "Video Passthrough", "Battery Life", "Feature", "Number Of Channels", "Series", "Sound Technology", and "Voice Assistant Compatible". The main content area shows six product cards arranged in a 2x3 grid. Each card features a product image, a "ON SALE" badge, a product name, a description, a star rating, a color selection, a price, a "Earn points" offer, and an "Add to cart" button. The products shown are: MDR-Z1R (Signature Series Premium Hi-Res Headphones), MDR-Z1M2 (Premium Hi-Res Headphones), SRS-XG500 (X-Series MEGA BASS™ Portable Bluetooth® Wireless Speaker), SRS-XP500 (X-Series Portable Bluetooth™ Wireless Party Speaker), SRS-XP700 (X-Series Portable Bluetooth™ Wireless Speaker), and WI-C310 (Wireless In-ear Headphones with Microphone).

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Sony also sells carrying cases, also under its SONY mark.

<sup>6</sup> *Id.* at 13.



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The other evidence of record shows that other brands do the same. Belkin sells headphones, in-ear monitors and carrying cases, all under its BELKIN mark.<sup>8</sup> Bose also sells headphones, in-ear monitors and carrying cases, all under its BOSE mark.<sup>9</sup> The evidence shows the same practices under the following marks: JBL,<sup>10</sup> Canon,<sup>11</sup> Nikon,<sup>12</sup> and Yamaha.<sup>13</sup> This evidence shows that these complementary goods—

<sup>7</sup> *Id.* at 12.

<sup>8</sup> *Id.* at 9 (headphones and in-ear monitors); 8 (carrying case).

<sup>9</sup> Final Office Action dated November 28, 2022 at 11-12 (headphones and in-ear monitors); 8-10 (carrying cases).

<sup>10</sup> *Id.* at 38-44 (headphones and in-ear monitors); 46 (microphone); 47-48 (carrying cases).

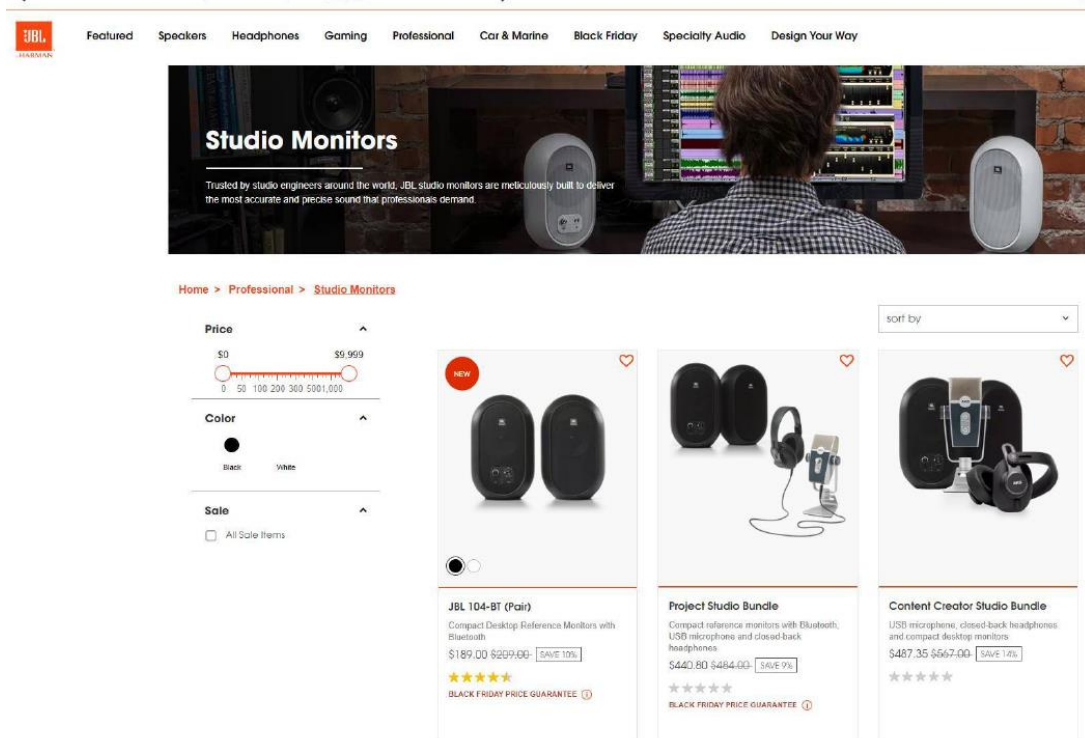
<sup>11</sup> *Id.* at 86 (microphones); 87 (carrying cases).

<sup>12</sup> *Id.* at 88 (microphone); 89-90 (carrying cases).

<sup>13</sup> Office Action dated April 27, 2022 at 25-26 (microphones); 30-31 (headphones and in-ear monitors); 32-33 (carrying cases).

microphones, headphones and in-ear monitors, on one hand, and carrying cases, on the other hand—are often sold under a single brand. This fact increases the likelihood of confusion.

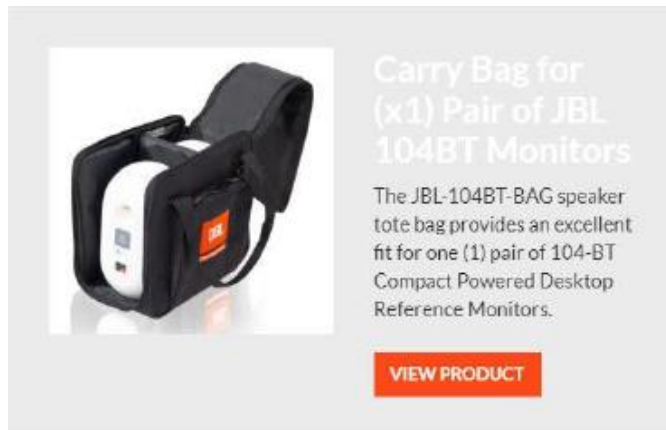
Applicant argues that some of its goods are not even complementary to the carrying cases identified in the cited Registration. Applicant expressly identifies “studio monitor speakers” as an example of such goods.<sup>14</sup> But the evidence shows that studio monitor speakers are not necessarily large, and JBL sells a case specifically made for one of the studio monitor speaker pairs it sells.



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<sup>14</sup> 4 TTABVUE 11.

<sup>15</sup> Final Office Action dated November 28, 2022 at 33.



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This evidence shows, yet again, that the goods identified in the Application and the carrying cases identified in the cited Registration are sold under a single mark.

Applicant also argues that the goods are not related because they are not found in the same section of a store or on the same webpage of a website.<sup>17</sup> That argument is misplaced, because it is more important to determine whether the same goods are often sold under a single mark, than whether those goods are always found in the same area of a retail store. Applicant submitted several photos taken at a Best Buy retail store in support of its argument. Upon closer inspection, this evidence undermines Applicant's position in this appeal.

Applicant's evidence of carrying cases sold at Best Buy includes the following SONY case:

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<sup>16</sup> *Id.* at 51.

<sup>17</sup> 4 TTABVUE 10-12.



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Applicant also submitted photos showing SONY headphones and in-ear monitors in the same store (though on a different aisle, according to Applicant).



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This evidence, from a single Best-Buy store, shows consumers will see both types of goods sold under the SONY brand. Applicant's evidence corroborates the Examining Attorney's Sony evidence, showing that Sony sells both types of goods in

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<sup>18</sup> Response to Office Action dated October 20, 2022, at 12. The image quality is poor, but the product clearly bears the SONY mark.

<sup>19</sup> *Id.* at 16.

retail stores like Best Buy, as well as on its Sony website. Indeed, the Examining Attorney also submitted evidence from the Internet stores of Circuit City and Best Buy, which shows that some of the brands identified above sell both types of goods in these two retail stores.<sup>20</sup> The record is quite clear on this point. The goods identified in the Application and in the cited Registration are often sold in the same markets, be it a brick-and-mortar store or an Internet store, under a single mark.<sup>21</sup> This evidence confirms the related natures of the goods and shows the trade channels overlap.

Applicant also argues that its goods are intended for professionals, so the typical consumer goods shown in the evidence are not relevant.<sup>22</sup> We disagree for two reasons. First, the identification of goods in the Application does not support this argument. While Applicant's goods include the limitation to "audio equipment used in recording, live sound, post-production, and broadcasting, namely, sound recording apparatus," this limitation does not apply to its identified microphones, headphones and in-ear monitors. There is no professional limitation to these goods in the identification and we cannot read such a limitation into the identification. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1053 (Fed. Cir. 2018) (noting

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<sup>20</sup> Final Office Action dated November 28, 2022 at 99-114 (Best Buy); 115-23 (Circuit City).

<sup>21</sup> Best Buy and Circuit City may be "big box" stores that sell a wide variety of goods, and the mere presence of two different products in such a store is not probative, standing alone, of the relatedness of the goods. There is, however, no evidence in the record showing the range of goods sold in these stores, and given that both stores appear to focus on sales of electronic products, we find this evidence supports the conclusion that the goods flow through the same trade channels.

<sup>22</sup> 4 TTABVue 13.

the impermissibility of an applicant's attempt to restrict the breadth of the goods or trade channels described in the cited registration); *In re FCA US LLC*, 126 USPQ2d 1214, 1217 n.18 (TTAB 2018), *aff'd*, 778 Fed. Appx. 962 (Fed. Cir. 2019) (“[W]e may consider any such restrictions [about the actual goods, or channels of trade] only if they are included in the identification of goods or services.”).

Second, this argument fails to account for the evidence of professional-grade audio equipment in the record. The Examining Attorney submitted evidence of professional-grade speakers, including studio monitors, and carrying cases sold under the Sony, Yamaha, Bose and JBL marks.<sup>23</sup> Even if we were to read the Application as limited to professional-grade goods, the evidence shows professional-grade audio gear, and carrying cases for that gear, are sold under the same mark. Applicant submitted no evidence to support its arguments about purchaser care, and we find the record does not support Applicant's arguments on this point.

We note, too, that the fourth *DuPont* factor looks to the least sophisticated purchaser, and we cannot determine, without evidence, how sophisticated or careful such a purchaser will be. *See Stone Lion Cap. Partners*, 110 USPQ2d at 1163 (“the applicable standard of care is that of the least sophisticated consumer”); *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1027 (TTAB 2009). For all these reasons, we treat this factor as neutral.

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<sup>23</sup> Office Action dated April 27, 2022 at 16-17 (Sony professional microphones and headphones); 24-29, 32-33 (Yamaha professional microphones, speakers, including studio monitors, and carrying cases/covers); Final Office Action dated November 28, 2022 at 19-27 (Bose professional audio); 28-34, 47-58 (professional speakers and cases).

To summarize, we find the goods are related in a way that increases the likelihood of confusion. The trade channels overlap, which also makes confusion more likely. The second and third *DuPont* factors weigh in favor of a likelihood of confusion, while the fourth *DuPont* factor is neutral.

### **C. Weighing the Factors**

The marks are similar. The goods are related in a way that increases the likelihood of confusion. The trade channels overlap. These three factors all push the scale decidedly toward a likelihood of confusion. The only other factor addressed by Applicant, the fourth *DuPont* factor, is neutral. Confusion is likely.

**Decision:** The Section 2(d) refusal is **affirmed**. 15 U.S.C. § 1052(d).