

This Opinion is Not a
Precedent of the TTAB

Mailed: July 25, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Bryant Family Confections, LLC
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Serial No. 97294648

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Albert Bordas of Albert Bordas, P.A.,
for Bryant Family Confections, LLC.

Michael Furda, Trademark Examining Attorney, Law Office 129,
Pamela Y. Willis, Managing Attorney.

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Before Zervas, Larkin and Elgin,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Bryant Family Confections, LLC (“Applicant”) applied to register the standard character mark ENCORE ZERO on the Principal Register for “wafers; edible wafers” in International Class 30.¹ Applicant disclaimed the term ZERO.

¹ Application Serial No. 97294648 was filed on March 3, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging Applicant’s bona fide intent to use the mark in commerce.

References to the briefs on appeal refer to the Board’s TTABVUE docket system. Page references to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. All citations to documents contained in the

The Examining Attorney issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding Applicant's mark is likely to cause confusion with:

- the standard character mark SWEET ENCORE (Registration No. 6147622, registered September 8, 2020, SWEET disclaimed) for “dessert items, namely, cakes, cheesecakes, crème brulee, dessert mousse, pies, cream puffs, bread pudding, flan, dessert soufflés, dessert bar cookies, bars, brownies, frozen desserts consisting of fruit and cream topping, mousse desserts consisting of cinnamon, chocolate, and cream” in International Class 30; and
- the composite mark



(Registration No. 6136480, registered August 25, 2020, SWEET and FINE DESSERTS disclaimed),² for “bakery goods and dessert items, namely, cakes, cheesecakes, crème brulee, dessert mousse, pies, cream puffs, bread pudding, flan, dessert soufflés, dessert bar cookies, brownies, desserts consisting of fruit and cream topping, desserts consisting of cinnamon, mousse, chocolate, and cream” in International Class 30.

TSDR database are to the downloaded .pdf versions of the documents in the USPTO TSDR Case Viewer. *See In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018).

² Registration No. 6136480 describes the mark as consisting of “the wording ‘SWEET ENCORE’ with ‘SWEET’ in smaller letters above the word ‘ENCORE’ within a rectangle design over a vertical ribbon-shaped design containing the words ‘FINE DESSERTS’, with both rectangle and ribbon designs having a single line surrounding the interior, at the top vertical ribbon design is the capital letter ‘E’ in cursive, surrounded by a jagged-edged circle, within a modified circle.” Color is not claimed as a feature of the mark.

After the Examining Attorney issued the final refusal, Applicant appealed to the Board. Applicant and the Examining Attorney then filed briefs. We affirm the refusal to register.

I. 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 services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination under Section 2(d) of the Trademark Act is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“*DuPont*”); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that “[t]he 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortgage Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). “Not all of the [*DuPont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph*

Learning LLC, 668 F.3d 1356, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)). Varying weight may be assigned to each factor depending on the evidence presented. *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 2024 USPQ2d 293, at *2 (Fed. Cir. 2024); see also *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *4 (Fed. Cir. 2023).

A. Similarity of the Marks

The *DuPont* factor regarding the similarity or dissimilarity of the marks – known as the first *DuPont* factor – requires a consideration of the marks in terms of appearance, sound, connotation, and overall commercial impression. *Palm Bay Imps.*, 73 USPQ2d at 1691. The test under this *DuPont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.*, 101 USPQ2d at 1721.

The respective marks “must be considered ... in light of the fallibility of memory ...” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). Therefore, the focus is on the recollection of the average purchaser, here, a member of the general purchasing public, who normally retains a general rather than a specific impression of trademarks. *In re Assoc. of the U.S. Army*,

85 USPQ2d 1264, 1268 (TTAB 2007); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). Further, “[n]o element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.” *In re Electrolyte Labs. Inc.*, 929 F.2d 645, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (CCPA 1974)). Nonetheless, 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 a consideration of the marks in their entireties. *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014)

With the foregoing in mind, we examine Applicant’s and Registrant’s marks, beginning with Applicant’s mark.

Applicant’s mark is a combination of the terms ENCORE and ZERO. The term “encore” is defined in relevant part in the online Merriam Webster dictionary as “a

second achievement especially that surpasses the first.”³ As so defined, we find the term slightly suggestive of Applicant’s goods in the sense that it offers praise regarding the quality of such goods – it is slightly laudatory of the goods.

In the context of the involved goods, “ZERO” is a term that indicates that the goods contain no sugar, calories or gluten. *See*:

- www.tasteofhome.com, explaining that the “ZERO” in “Coke Zero” refers to the beverage containing zero sugar and calories.⁴
- www.popzeropopcorn.com, offering popcorn and explaining that the “zero” means “ZERO gluten, saturated fats, dairy, artificial flavors, GMO corn, soy, animal products, or peanuts/tree nuts.”⁵
- www.hummkombucha.com, offering a kombucha-based beverage using the term “ZERO” to refer to the lack of sugar in the beverage.⁶

The Examining Attorney points out as well that this evidence shows that the term “ZERO” is commonly placed at the end of marks for food products, and that it signals that the goods contain “zero” amounts of a certain substance.⁷

We find that the evidence establishes that the term “ZERO” is descriptive of a characteristic of Applicant’s goods. In addition, Applicant has disclaimed this term apart from the mark as shown. Wording that is descriptive of identified goods and

³ April 4, 2023 Response, TSDR 4. Applicant did not provide an access date for this definition, but the Examining Attorney did not object to Applicant’s lack of an access date. We therefore consider the definition despite Applicant’s omission. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 1208.03 (2024) and cases cited therein.

⁴ January 3, 2023 Office Action, TSDR 12.

⁵ *Id.*, TSDR 13.

⁶ *Id.*, TSDR 14.

⁷ Examining Attorney’s brief, 8 TTABVUE 6.

that has been disclaimed is typically less significant or less dominant when comparing marks. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022). The primary source indicator – and hence the dominant element – in Applicant’s two-word mark is the term ENCORE.

Turning to Registrant’s composite mark, ENCORE is also the dominant word in that mark.⁸ It is centrally positioned and is the largest word, outsizing other terms by far. It is also the only non-descriptive word and the only word which has not been disclaimed. (As noted above, SWEET and FINE DESSERTS have been disclaimed). *See In re Aquitaine Wine USA LLC*, 126 USPQ2d 1181, 1184-85 (TTAB 2018) (“Displayed in a large, bold typeface, it comprises the largest literal portion of the mark in terms of size, position, and emphasis.”).

Further, the mark includes a rectangle design over a vertical ribbon-shaped design, and a jagged-edged circle. A stylized letter “E” – which is the leading letter of the word ENCORE – lies within the jagged-edged circle and serves to emphasize the word ENCORE. *See UMG Recordings, Inc. v. Mattel, Inc.*, 100 USPQ2d 1868, 1887 (TTAB 2011) (“The ‘M’ in the first design mark above merely reinforces the first letter in MOTOWN, and the font and square border are insignificant.”); *In re Cont’l*

⁸ For reference, the mark is described in the registration as consisting of “the wording ‘SWEET ENCORE’ with ‘SWEET’ in smaller letters above the word ‘ENCORE’ within a rectangle design over a vertical ribbon-shaped design containing the words ‘FINE DESSERTS’, with both rectangle and ribbon designs having a single line surrounding the interior, at the top vertical ribbon design is the capital letter ‘E’ in cursive, surrounded by a jagged-edged circle, within a modified circle.”


Graphics Corp., 52 USPQ2d 1374, 1376 (TTAB 1999) (“Indeed, the dominant role of the word CONTINENTAL in the overall commercial impression created by the registered mark is reinforced, rather than negated, by the inclusion in the mark of the globe design depicting stylized continents and the inclusion of the large letter ‘C,’ which is the first letter of the word CONTINENTAL.”).

The design components of the cited composite mark are not as significant as the wording in forming the commercial impression of the mark. In general, the word portion of a mark is accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods. *In re Aquitaine Wine*, 126 USPQ2d at 1184 (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). “The verbal portion of a word and design mark ‘likely ... will be spoken when requested by consumers.’” *Id.* (quoting *Viterra*, 101 USPQ2d at 1911). Here, the components of the cited composite mark are common elements that serve as background for the wording and reinforce the disclaimed wording FINE DESSERTS which would not be articulated – the jagged-edge circle brings to mind a doily on which a fine dessert is placed and the ribbon evokes a packaging ribbon for a box containing a fine dessert.⁹

⁹ See *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (a “puzzle design does not convey any distinct or separate impression apart from the word portion of the mark ... it serves only to strengthen the impact of the word portion in creating an association with crossword puzzles”); *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *34 (TTAB 2023) (blue rectangle in the mark suggests an ice cube and reinforces the term ICE); *In re Swatch Grp. Mgmt. Servs. AG*, 110 USPQ2d 1751, 1762 (TTAB 2014) (“combination of the design [of a tourbillon] with the word TOURBILLON reinforces the singular impression conveyed by the mark as a whole, which is nothing more than the significance of ‘tourbillon’”), *aff’d mem.*, 599 F. App’x 959 (Fed. Cir. 2015).

Upon consideration of the foregoing, we find that the shared term ENCORE is the most significant and hence dominant element in both Applicant's standard character mark and Registrant's composite mark, and accord it more weight than the other elements of each mark. We find Applicant's mark and Registrant's composite mark are similar in sound, meaning, appearance and commercial impression.¹⁰ In arriving at our finding, we reject Applicant's contention that its mark "gives a mental impression of no demand for repetition or reappearance made by an audience, as the word 'Zero' follows the word 'ENCORE'" (emphasis removed)¹¹ because it is inconsistent with Applicant's disclaimer of "ZERO," by which Applicant acknowledged that ZERO is a term that describes a feature or characteristic of its goods. If "zero" has the connotation Applicant advocates, it should not have disclaimed the term.

Turning next to Registrant's standard character mark, we find that the term ENCORE in that mark is the dominant term because the disclaimed term SWEET – the first term that consumers will perceive when viewing the mark – merely informs consumers of the goods that they taste sweet. *Monster Energy*, 2023 USPQ2d 87, at

*51 (finding MONSTER ENERGY and  similar). Because the mark is a standard character mark, it may be displayed in any stylization, font, color and

¹⁰ The dominant terms in the marks sound the same. For that reason, Applicant's argument about the differences in the sounds of the marks considered as a whole is not persuasive. *See* Applicant's brief, 4 TTABVUE 27-28.

¹¹ Applicant's brief, 4 TTABVUE 16.

size; the rights reside in the wording and not in any particular display or rendition. *See Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) (a mark in standard character form is not limited to the depiction thereof in any special form); *see also* Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a) (standard character marks are “without claim to any particular font style, size, or color”). The mark therefore may be displayed as follows where “ENCORE” is emphasized:



We find, then, that ENCORE is the dominant portion of Registrant’s standard character mark as well and give it greater weight in establishing the commercial impression of that mark. We further find that (i) the shared term ENCORE is the most significant and dominant element in Applicant’s and Registrant’s standard character marks, and accord ENCORE more weight than the other elements of each mark; and (ii) Applicant’s and Registrant’s standard character marks are therefore similar in sound, meaning, appearance and commercial impression.

The *DuPont* factor regarding the similarity of the marks hence favors a finding of likelihood of confusion with both cited marks.

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

The two *DuPont* factors we consider next are the “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” (known as the second *DuPont* factor), and “the similarity or dissimilarity of

established, likely-to-continue trade channels” (known as the third *DuPont* factor). *DuPont*, 177 USPQ at 567.

In determining the relatedness of the goods under the second *DuPont* factor, we look to the goods as identified in Applicant’s application and the cited registrations. *See Stone Lion*, 110 USPQ2d at 1162 (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”)); *see also In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

Both cited registrations include “dessert items, namely ... dessert bar cookies.” A “dessert bar cookie” is a type of cookie, and the Examining Attorney’s evidence demonstrates that the goods identified the application as “wafers” also include a type of cookie. *See* webpages from biggerbolderbaking.com, mohealth.uservoice.com, mexgrocer.com, goya.com, Target, lockerusa.com, and Walmart.¹² Because both goods are types of cookies, the goods are inherently related. We therefore find the second *DuPont* factor favors a finding of likelihood of confusion.

With regard to the third *DuPont* factor, “[t]here are no limitations as to channels of trade or classes of purchasers in the identification[s] of goods,” and “[i]t therefore is presumed that [A]pplicant’s goods move in all channels of trade normal for those

¹² Final Office Action TSDR 10-57.

goods, and that they are available to all classes of purchasers for those goods.” *Stone Lion*, 110 USPQ2d at 1161. Of course, the purchasers of Registrant’s and Applicant’s cookies – members of the general public – at least overlap, and possibly are identical, and the same is true with respect to the channels of trade for different types of cookies.

The third *DuPont* factor is also resolved in favor of finding likelihood of confusion.

B. The Number and Nature of Similar Marks in Use on Similar Goods

Applicant argues that the term “ENCORE” is weak, relying on the following four third-party registrations, each owned by a different entity:¹³

- Registration No. 5815656 (ENCORE and Design) covers “vegetables, namely, canned vegetables and processed vegetables; and water chestnuts, namely, canned water chestnuts and processed water chestnuts, none of the foregoing being frozen” and “condiments, namely, mustard, Worcestershire sauce, horseradish, smoke flavoring for food in liquid form, cocktail sauce, and tartar sauce; sauces; and seasonings, none of the foregoing being frozen”;
- Registration No. 6464479 (ENCORE) covers “Coffee, mixes for making coffee in the nature of instant coffee, coffee based drinks; Tea, mixes for making tea, tea drinks”;¹⁴
- Registration No. 4661846 (KERNEL ENCORE and Design) covers “Candy coated popcorn; Caramel popcorn; Chocolate covered popcorn; Flavor-coated popped popcorn; Glazed popcorn; Kettle corn; Popped popcorn”;¹⁵ and

¹³ Applicant’s brief at p. 25, TTABVUE (“common use of a term by third parties in the same industry could support a claim that the mark is conceptually weak.”)

¹⁴ April 4, 2023 Office Action, TSDR 15.

¹⁵ *Id.* at 17.

- Registration No. 1913619 (ENCORES) covers “candy.”¹⁶

“[A] large number of active third-party registrations including the same or similar term or mark component for the same or similar goods or services may be given some weight to show, in the same way that dictionaries are used, that a mark or a portion of a mark has a normally understood descriptive or suggestive connotation, leading to the conclusion that the term or mark component is relatively weak.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1207.01(d)(iii) (May 2024) (citing *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 2023 USPQ2d 737, at *4-5 (Fed. Cir. 2023); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); and other cases).

We are not persuaded by Applicant’s showing. One problem with its evidence is that the four registrations are not “a large number.” Another problem is that the registrations are for goods that are not identical to the dessert goods listed in the cited registration, and Applicant has not attempted to demonstrate that such goods are related. *See In re i.am.symbolic llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (the applicant “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes ... support a finding that registrants’ marks are weak with respect to the goods identified in their registrations”).

¹⁶ *Id.* at 21.

We hence find that the registrations do not establish any weakness beyond the suggestive connotation noted above,

The sixth *DuPont* factor relating to number and nature of marks in use with similar goods of the mark is neutral in the likelihood of confusion inquiry.

C. The Conditions Under Which and Buyers to Whom Sales are Made – Impulse vs. Careful, Sophisticated Purchasing

Applicant argues that highly sophisticated consumers purchase wafers and edible wafers.¹⁷ Applicant does not explain or provide evidence supporting its contention that consumers of wafers are highly sophisticated, and we do not know any reason why a member of the general public buying cookies would be highly sophisticated in their purchasing decisions. “Attorney argument is no substitute for evidence.” *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005); *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018). Further, Applicant’s identification of goods is not restricted as to price and, therefore, we must presume that Applicant’s goods include edible wafers that are inexpensive. Indeed, the evidence demonstrates that edible wafers can cost as little as \$3.89 per package.¹⁸ At that price, Applicant’s unsupported argument regarding purchaser sophistication makes little sense. Also, “Board precedent requires the decision to be based ‘on the least sophisticated potential purchasers,’” *Stone Lion*, 110 USPQ2d at 1163 (quoting *Gen. Mills, Inc. v. Fage Dairy Proc. Indus.*

¹⁷ Applicant’s brief, 4 TTABVUE 21.

¹⁸ Final Office Action, TSDR 41.

S.A., 100 USPQ2d 1584, 1600 (TTAB 2011), *judgment set aside on other grounds*, 110 USPQ2d 1584 (TTAB 2014)).

Applicant argues that “[a]ny likelihood of confusion is also obviated by the degree of consumer care involved in the purchasing of these services since it involves personal health of human beings, as compared to Applicant’s animal hospital for pets.”¹⁹ Applicant has not explained its references to “services,” when the present case involves goods, and what it means by the “personal health of human beings,” and “animal hospitals for pets,” when this appeal involves dessert foods. In addition, most of the precedent Applicant cites to are district and circuit decisions which are not precedent governing Board proceedings. *See* TBMP § 101.03 (“Proceedings before the Board are also governed, to a large extent, by precedential decisions ... of the Board, as well as the decisions of the United States Supreme Court; the Court of Appeals for the Federal Circuit ...; the Court of Customs and Patent Appeals ... and the Director of The United States Patent and Trademark Office”)

We thus find the *DuPont* factor regarding purchasing conditions is neutral in the likelihood of confusion analysis.

II. Conclusion on Likelihood of Confusion

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. *See Charger Ventures*, 2023 USPQ2d 451, at *7. Applicant’s and Registrant’s marks are similar, the goods are related and the purchasers and trade channels at a minimum overlap. The remaining *DuPont* factors

¹⁹ Applicant’s brief, 4 TTABVUE 21.

discussed above are neutral. We therefore conclude that Applicant's mark ENCORE ZERO for "wafers; edible wafers" is likely to cause source confusion with the cited standard character mark SWEET ENCORE and the composite mark



, both for goods including "dessert items, namely ... dessert bar cookies."

Decision: The refusal to register under Section 2(d) is affirmed.