

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: September 13, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Christian Michael Montemurro-Navarro*  
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Serial No. 97407965  
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Michael E. Dockins of Shumaker, Loop & Kendrick, LLP,  
for Christian Michael Montemurro-Navarro.

Bria Stephens, Trademark Examining Attorney, Law Office 122,  
Kristin Dahling, Managing Attorney.

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Before Greenbaum, Coggins and O'Connor,  
Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Christian Michael Montemurro-Navarro ("Applicant") seeks registration on the  
Principal Register of the mark KID CHRISTIAN, in standard characters, for

Hats; Shirts; Sweatshirts; Bandanas; Hooded sweatshirts,  
in Class 25, and

Entertainment in the nature of wrestling contests;  
Entertainment services, namely, wrestling exhibits and  
performances by a professional wrestler and entertainer;  
Entertainment services, namely, live appearances by a  
professional wrestling and sports entertainment  
personality; Entertainment services, namely, personal  
appearances by a professional wrestling and sports  
entertainment personality; Entertainment services,

namely, televised appearances by a professional wrestling and sports entertainment personality; Providing wrestling news and information via a global computer network; Providing online interviews featuring professional wrestling and sports entertainment personality in the field of professional wrestling and sports entertainment for entertainment purposes, in Class 41.<sup>1</sup>

The Trademark Examining Attorney refused registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified goods and services, is likely to cause confusion, mistake or deception with the registered mark CHRISTIAN, in standard characters, for

Entertainment services, namely, wrestling exhibitions and performances by professional wrestlers and entertainers; providing wrestling news and information via a global computer network, in Class 41.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, and the appeal was resumed. The case is fully briefed. We affirm the refusal to register Applicant's mark in both classes.

#### I. Evidentiary Issues

Applicant attached several items to his appeal brief that were not submitted during prosecution, namely, the TSDR records for the cited registration and Reg. No.

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<sup>1</sup> Application Serial No. 97407965 was filed on May 12, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere and in commerce as of October 8, 2016, for the Class 25 goods, and July 10, 2015, for the Class 41 services. The name shown in the mark identifies Christian Michael Montemurro-Navarro, whose consent to register is of record.

<sup>2</sup> Registration No. 4017648 issued on August 30, 2011; renewed.

6786816 for the mark CHRISTIAN CAGE, as well as Internet materials purportedly showing viewership of the broadcasts of those mark owners.<sup>3</sup> The Examining Attorney objects to this evidence as untimely.<sup>4</sup>

As background, in his response to the Examining Attorney's first Office Action, Applicant mentioned "Reg. No. 6786816 for CHRISTIAN CAGE for wrestling services and merchandise," purportedly owned by a third party, and argued that its coexistence with the cited mark CHRISTIAN establishes that KID CHRISTIAN likewise can co-exist.<sup>5</sup> Applicant did not introduce a copy of this registration, or even identify the owner.<sup>6</sup> The Examining Attorney then issued a Final Office Action that, although not naming the CHRISTIAN CAGE mark, generally discounted the weight accorded third-party registrations, without objecting to Applicant's reference thereto or stating the correct procedure to make the registration of record.<sup>7</sup>

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<sup>3</sup> 6 TTABVUE 9-85 (TSDR Record for cited registration for CHRISTIAN); 86-133 (TSDR Record for Reg. No. 6786816 for CHRISTIAN CAGE); 134-77 (Internet printouts; associated hyperlinks also included in Applicant's Brief, *id.* at 7).

References to the briefs on appeal refer to TTABVUE, the Board's public online docketing system. 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. 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 TSDR database are to the downloaded .pdf versions of the documents.

<sup>4</sup> 8 TTABVUE 12-13.

<sup>5</sup> May 16, 2023 Response to Office Action, TSDR 6.

<sup>6</sup> *See id.* The Examining Attorney did not question ownership of the CHRISTIAN CAGE registration and therefore we assume for purposes of this decision that it is owned by a third party.

<sup>7</sup> May 18, 2023 Final Office Action, TSDR 4. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.03 (May 2024) (describing procedure to properly make of record a registration from USPTO records).

In his request for reconsideration, Applicant “reiterate[d] that the co-existence of a CHRISTIAN mark with a CHRISTIAN CAGE mark on the register indicates that the USPTO is willing to allow CHRISTIAN-inclusive marks to co-exist, even as they pertain to identical services[,]” with “no coexistence agreement or other agreement[.]”<sup>8</sup> Again, Applicant did not introduce a copy of Reg. No. 6786816 for CHRISTIAN CAGE, but, again, the Examining Attorney did not object, discounting the weight accorded third-party registrations, generally.<sup>9</sup>

“The Board does not take judicial notice of registrations and a list of registrations does not make those registrations of record.” *In re Peace Love World Live, LLC*, Serial No. 86705287, 2018 TTAB LEXIS 220, at \*17 n.17 (TTAB 2018).<sup>10</sup> An examining attorney may waive the right to object to registrations listed in an Office Action response by failing to object or advise Applicant of the proper procedure at a point when Applicant could cure the insufficiency. TBMP § 1207.03. “Similarly, if the examining attorney discusses the registrations in an Office action or brief, without objecting to them, the registrations will be treated as stipulated into the record....

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<sup>8</sup> November 16, 2023 Request for Reconsideration, TSDR 1.

<sup>9</sup> December 28, 2023 Denial of Request for Reconsideration, TSDR 2.

<sup>10</sup> As part of an internal Board pilot program to broaden acceptable forms of legal citation in Board cases, citations in this opinion are in the form recommended in 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 by the pages on which they appear in the Federal Reporter (*e.g.*, F.2d, F.3d or F.4th). For opinions of the Board, this opinion uses citations to the Lexis legal database and cites only precedential decisions. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

However, the Board will not consider more than the information provided by the applicant.” *Id.* § 1208.02.

Because the Examining Attorney did not timely object to Reg. No. 6786816 for CHRISTIAN CAGE (which Applicant listed in both the Response to Office Action and the Request for Reconsideration) or advise Applicant of the proper procedure to make the registration of record, any objection has been waived, and we have considered the information Applicant provided regarding this registration for whatever probative value it may have. *See, e.g., In re Mayweather Promotions, LLC*, Serial No. 86753084, 2020 TTAB LEXIS 467, at \*12 n.17 (TTAB 2020) (failure to advise applicant of insufficiency of list of registrations when proffered during examination, which examining attorney discussed in next Office Action, waived any objection to consideration of that list); *In re Broyhill Furniture Indus., Inc.*, Serial No. 75473959, 2001 TTAB LEXIS 612, at \*6 n.3 (TTAB 2001) (considering applicant’s evidence of third-party registrations “for whatever limited probative value such evidence may have”).

As for the evidence submitted for the first time with Applicant’s brief, namely, the TSDR records for the cited CHRISTIAN and presumably third-party CHRISTIAN CAGE registrations and the Internet evidence of viewership, we sustain the Examining Attorney’s objection and do not consider this evidence. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (record “should be complete prior to the filing of an appeal”; proper procedure to introduce evidence after appeal is to seek to suspend the appeal and remand the application for further examination); *see also In re Midwest*

*Gaming & Ent. LLC*, Serial No. 85111552, 2013 TTAB LEXIS 55, at \*5 n.3 (TTAB 2013) (new evidence submitted with brief is “untimely and therefore not part of the record for this case”).

Finally, we do not consider the hyperlinks embedded in Applicant’s brief, which purportedly link to the new Internet evidence of viewership attached to Applicant’s brief. As noted by the Examining Attorney,<sup>11</sup> no evidence of viewership was made of record prior to appeal, and therefore it too is untimely. Further, merely providing web addresses or hyperlinks is insufficient to make the underlying webpages of record. *In re ADCO Indus. – Techs., L.P.*, Serial Nos. 87545258 and 87545533, 2020 TTAB LEXIS 7, at \*4 (TTAB 2020); *In re Aquitaine Wine USA, LLC*, Serial No. 86928469, 2018 TTAB LEXIS 108, at \*27 n.21 (TTAB 2018) (Board does not consider websites for which only links are provided).

We now turn to the merits of the appeal.

## II. Likelihood of Confusion

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up).

Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (setting forth factors to

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<sup>11</sup> 8 TTABVUE 12.

be considered, hereinafter referred to as “*DuPont* factors”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *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)).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See Charger Ventures*, 64 F.4th at 1381 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis.”). 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 Chatam Int’l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Goods and Services, Trade Channels and Classes of Consumers

Under these *DuPont* factors, we compare the goods and services as they are identified in the Application and cited registration. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014) (Board must give “full scope” to an identification of goods or services). “Likelihood of confusion must be found if there is

likely to be confusion with respect to any item in a class that comes within the identification of goods in the application and cited registration.” *In re i.am.symbolic, llc*, Serial No. 85044494, 2015 TTAB LEXIS 369, at \*8 (TTAB 2015), *aff’d*, 866 F.3d 1315 (Fed. Cir. 2017).

Here, the services in Class 41 are in-part legally identical, as both the Application and cited registration cover the following services, with only minor variations in wording (shown in brackets):

Entertainment services, namely, wrestling exhibit[ion]s and performances by [a] professional wrestler[s] and entertainer[s], and

Providing wrestling news and information via a global computer network.

Given that Applicant’s Class 41 services are legally identical, at least in part, to the services in the cited registration, without any limitations as to their nature, channels of trade or classes of customers in either identification, “we must presume that the channels of trade and classes of purchasers are the same as to those legally identical services.” *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 TTAB LEXIS 14, at \*23 (TTAB 2023) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (identical goods or services are presumed to travel in same channels of trade to same class of purchasers)); *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (Board “properly followed our case law and presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods”) (internal quotation marks omitted). Thus, the trade channels and classes of consumers are presumed to be the same for Applicant’s and



Registrant's legally identical Class 41 wrestling-related entertainment and news and information services. Applicant does not argue otherwise.

The Application also covers hats, shirts, sweatshirts, bandanas and hooded sweatshirts in Class 25, which are not present in the cited registration. The goods and services do not need to be identical or competitive to find a likelihood of confusion. *See On-line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). Instead, the goods and services need only 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*, Opp. No. 91117739, 2007 TTAB LEXIS 58, at \*28-29 (TTAB 2007)).

To support her argument that the Class 25 goods identified in the Application are related to the Class 41 wrestling-related services identified in the cited registration, the Examining Attorney submitted Internet evidence showing that these goods are commonly offered by the same sources as entertainment services in the nature of wrestling exhibitions and performances by professional wrestlers and providing wrestling news and information via a global computer network.<sup>12</sup> Applicant submits no contrary evidence or argument, simply faulting the Examining Attorney for making "conclusory statements" that the goods are related to the wrestling services

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<sup>12</sup> February 16, 2023 Office Action, TSDR 4-5, 9-75; May 18, 2023 Final Office Action, TSDR 5-6, 8-86; December 28, 2023 Denial of Request for Reconsideration, TSDR 2, 4-72.

identified in the cited registration.<sup>13</sup> Yet “[s]tatements in a brief cannot take the place of evidence.” *In re Simulations Pubs., Inc.*, 521 F.2d 797, 798 (CCPA 1975); *see also Boston Red Sox Baseball Club LP v. Sherman*, Opp. No. 91172268, 2008 TTAB LEXIS 67, at \*18 (TTAB 2008).

The evidence submitted demonstrates that multiple parties offer the wrestling-related services identified in the cited registration under the same mark as various clothing items identified in the Application. Examples include: WWE’s wrestling exhibitions, news and WWE logo-branded hats,<sup>14</sup> NWA’s wrestling exhibitions, news and NWA-branded hooded sweatshirts,<sup>15</sup> and Impact Wrestling’s wrestling exhibitions, news and Impact Wrestling-branded t-shirts.<sup>16</sup>

The record amply supports a finding that Applicant’s Class 25 goods, including hats, shirts and hooded sweatshirts, are related to the Class 41 services identified in the cited registration, i.e., entertainment services, namely, wrestling exhibitions and performances by professional wrestlers and entertainers and providing wrestling news and information via a global computer network.

As for the channels of trade and classes of consumers, Applicant’s Class 25 goods, absent an explicit restriction not present here, “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.” *DeVivo v. Ortiz*, Opp. No. 91242863, 2020 TTAB

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<sup>13</sup> 6 TTABVUE 4.

<sup>14</sup> February 16, 2023 Office Action, TSDR 9-34, 71-72.

<sup>15</sup> May 18, 2023 Final Office Action, TSDR 28-44.

<sup>16</sup> *Id.* at 8-22.

LEXIS 15, \*40 (TTAB 2020). As general consumer goods, we find that Applicant's identified goods are marketed to the general population, which may overlap with Registrant's services insofar as they both are marketed to persons interested in wrestling entertainment, news and information. Further, the Examining Attorney's evidence shows that Applicant's recited clothing items such as hats, shirts and hooded sweatshirts are commonly offered by the same source, under the same mark, and often on the same website, as wrestling entertainment, news and information services.<sup>17</sup> The channels of trade and classes of consumers of Applicant's Class 25 goods thus overlap with those of Registrant's Class 41 services. *See, e.g., In re Davey Prods. Pty*, Serial No. 77029776, 2009 TTAB LEXIS 524, at \*18 (TTAB 2009) (evidence that goods would be encountered by the same purchasers on the same websites showed overlap in trade channels).

These *DuPont* factors weigh in favor of a likelihood of confusion.

#### B. Strength of the Mark in the Cited Registration

Because the strength of the cited mark impacts our comparison of the marks, we first consider Applicant's contention that the cited registered CHRISTIAN mark is only entitled to a "limited scope of protection"<sup>18</sup> due to a single CHRISTIAN-formative

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<sup>17</sup> *E.g.*, May 18, 2023 Final Office Action, TSDR 33-44 (wrestling entertainment services, news and hooded sweatshirts offered on nationalwrestlingalliance.com); *id.* at 73-76 (wrestling exhibitions and clothing items promoted on czwrestling.com and related website shopczw.com); December 28, 2023 Denial of Request for Reconsideration, TSDR 4-15 (wrestling exhibition tickets, information, and merchandise including t-shirts offered on realityofwrestling.com); *id.* at 40-52 (wrestling information and logo hat offered on shimmerwrestling.com website).

<sup>18</sup> 6 TTABVUE 6.

registered mark for wrestling services and merchandise. Specifically, Applicant argues that the coexistence of Reg. No. 6786816 for CHRISTIAN CAGE, which shares a leading term with CHRISTIAN, evidences a “crowded field” of CHRISTIAN-formative marks for wrestling services and merchandise such that Applicant’s mark also can coexist.<sup>19</sup>

In determining the strength of a mark under the sixth *DuPont* factor, we consider “[t]he number and nature of similar marks in use on similar goods [or services].” *i.am.symbolic*, 866 F.3d at 1327 (quoting *DuPont*, 476 F.2d at 1361); see also *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, Opp. No. 91217095, 2016 TTAB LEXIS 604, \*11 (TTAB 2016). Evidence that the consuming public is exposed to third-party uses of similar marks for similar goods or services “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005).

We are not persuaded by Applicant’s arguments or evidence of the single registration.

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<sup>19</sup> *Id.* at 6-7. As noted above, we only consider the specific information regarding the CHRISTIAN CAGE registration provided by Applicant during prosecution; we do not consider the TSDR record or other details that Applicant belatedly submitted on appeal, and therefore do not further consider any arguments in Applicant’s brief based on such materials. See, e.g., *In re 1st USA Realty Professionals, Inc.*, Serial No. 78553715, 2007 TTAB LEXIS 73, \*3-4 (TTAB 2007) (Board treated listing of particulars of third-party applications/registrations submitted by applicant as stipulated into record only to the extent of the specific data provided by applicant); TBMP § 1208.02.

First, there is no evidence of use of the CHRISTIAN CAGE mark in commerce, which Applicant concedes would be important to its probative value.<sup>20</sup> Hence, the CHRISTIAN CAGE registration does not diminish the commercial strength of the cited mark. *See In re EmbiiFor*, Serial No. 88202890, 2021 TTAB LEXIS 168, at \*46 (TTAB 2021). Unlike the cases cited by Applicant, which show extensive use of a shared term or symbol by many third parties for the same or related goods or services, there is no evidence of any third-party use or registration of the term “CHRISTIAN” by itself, or as a formative (other than as part of the registered CHRISTIAN CAGE mark), for any goods or services. *Cf. Anthony’s Pizza & Pasta Int’l, Inc. v. Anthony’s Pizza Holding Co.*, Opp. No. 91171509, Canc. No. 92045956, 2009 TTAB LEXIS 718, at \*25 (TTAB 2009), *aff’d*, 415 F. App’x 222 (Fed. Cir. 2010) (evidence of multiple parties using “Anthony’s” as a trademark for restaurant services warranted restricted scope of protection). In short, even if we were to credit the single registered mark cited by Applicant, this alone does not support a finding that the term CHRISTIAN is weak or diluted for wrestling-related goods and services. *See In re i.am.symbolic*, 866 F.3d at 1329 (evidence that cited mark coexisted with two third-party registrations of same mark for same or similar goods “falls short of the ‘ubiquitous’ or ‘considerable’ use of the mark components present in” cases finding commercial weakness); *see also Bond v. Taylor*, Opp. No. 91213606, 2016 TTAB LEXIS 218, \*20-22 (TTAB 2016) (single third-party use insufficient to show that opposer’s mark is weak especially without evidence of extent of use).

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<sup>20</sup> *Id.* at 7.

Nor is there evidence that the term CHRISTIAN has any recognized meaning or significance with respect to wrestling or clothing other than as the name or persona of a wrestler, for which it is an arbitrary designation. *Cf. Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339-40 (Fed. Cir. 2015) (remanding for consideration whether extent of third-party use and registration indicates that “PEACE & LOVE” commonly evokes counterculture of 1960’s and 1970’s); *Anthony’s Pizza*, 2009 TTAB LEXIS 718, at \*25 (extensive third-party use showed that “Anthony’s” has significance for restaurant services, suggesting an Italian or New York-style Italian restaurant).

Applicant’s contention that “the USPTO has already set a precedent”<sup>21</sup> that KID CHRISTIAN can coexist with the cited mark by registering the purportedly “more similar”<sup>22</sup> CHRISTIAN CAGE mark for wrestling services and merchandise fares no better. Because we are not privy to the reasons the registrations for the marks CHRISTIAN and CHRISTIAN CAGE coexist, we follow the often-repeated principle from the Federal Circuit, our primary reviewing court, that the Board is not bound by the decisions of examining attorneys to register prior marks. To the contrary, the Board must decide each application on its own merits. *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [Applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”).

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<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.* at 5.

We find that the mark in the cited registration, CHRISTIAN, is entitled to a normal scope of protection. The sixth *DuPont* factor is neutral.

### C. Similarity of the Marks

We compare the marks KID CHRISTIAN and CHRISTIAN “in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Ath.*, 903 F.3d at 1303 (quoting *DuPont*, 476 F.2d at 1361); *see also Palm Bay Imps.*, 396 F.3d at 1371. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, Serial No. 87075988, 2018 TTAB LEXIS 170, at \*13 (TTAB 2018) (quoting *In re Davia*, Serial No. 85497617, 2014 TTAB LEXIS 214, at \*4 (TTAB 2014)), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019).

“The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai*, 901 F.3d at 1373 (quoting *Coach Servs.*, 668 F.3d at 1368) (cleaned up); *see also In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (marks “must be considered ... in light of the fallibility of memory ...”) (internal quotations omitted). However, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Charger Ventures*, 64 F.4th at 1382 (permissible for the Board “to focus on dominant portions of a mark”).

We are mindful that for Class 41, “the degree of similarity necessary to support a conclusion of likely confusion declines” because the services are legally identical in-part. *In re Viterra Inc.*, 671 F.3d at 1363 (quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992)).

Applicant’s mark KID CHRISTIAN and Registrant’s mark CHRISTIAN look and sound similar to the extent they share the term CHRISTIAN. Applicant’s mark incorporates the entirety of Registrant’s arbitrary mark, adding the word KID before the word CHRISTIAN. Although there is no per se rule that likelihood of confusion exists where one mark incorporates the entirety of another mark, the fact that one mark is subsumed within another increases the similarity between the two. *See, e.g., Bureau Nat’l Interprofessionnel du Cognac v. Cologne*, 110 F.4th 1356 (Fed. Cir. 2024) (citing *Coca-Cola Bottling Co. of Memphis, Inc. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 557 (CCPA 1975)).

Applicant contends that the use of an additional, and different leading, word lends a distinct visual impression to KID CHRISTIAN.<sup>23</sup> We disagree. Although in some cases the first word of a mark may be dominant, here the word KID is a short, monosyllabic word that does little to visually distinguish the marks. Rather, the additional word KID modifies and thereby highlights the second word, CHRISTIAN, rendering CHRISTIAN dominant regardless of its placement. *See Stone Lion*, 746 F.3d at 1322 (Board did not err by according little weight to the adjective “STONE,” which did not “distinguish the marks in the context of the parties’ services”) (citing *In re Rexel Inc.*,

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<sup>23</sup> 6 TTABVUE 5.



Serial No. 241423, 1984 TTAB LEXIS 57, \*6 (TTAB 1984) (finding likelihood of confusion between GOLIATH for pencils and LITTLE GOLIATH for staplers)).

Nor does the addition of KID create a commercial impression distinct from the cited mark.<sup>24</sup> In the context of the identified wrestling services, the connotation of CHRISTIAN in both marks is the name or persona of a wrestler. Consumers familiar with the cited CHRISTIAN mark are likely to perceive KID CHRISTIAN as a diminutive version or extension of that brand, potentially a nickname or reference to a child or younger sibling within the same wrestling “family.” *See, e.g., Double Coin Holdings Ltd. v. Tru Dev.*, Canc. No. 92063808, 2019 TTAB LEXIS 347, \*23 (TTAB 2019) (“ROAD WARRIOR looks, sounds, and conveys the impression of being a line extension of WARRIOR.”). In view of the similar appearance, sound and connotation of the shared term CHRISTIAN, Applicant’s mark and the cited mark convey a similar overall commercial impression of the same wrestler, or two wrestlers who are related.

Considering the marks in their entirety, we find that, although the marks KID CHRISTIAN and CHRISTIAN are not identical, they are similar in appearance, sound, connotation and commercial impression due to the shared term CHRISTIAN, which comprises the entirety of Registrant’s mark and the dominant portion of Applicant’s mark. The first *DuPont* factor weighs in favor of likelihood of confusion.

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<sup>24</sup> *Id.*

D. Conclusion

Applicant's and Registrant's identified services in Class 41 are identical in-part, with presumptively identical channels of trade and classes of consumers. Applicant's identified goods in Class 25, including hats, shirts and hooded sweatshirts, are related to Registrant's wrestling services in Class 41, and the channels of trade and classes of consumers overlap. Thus, these *DuPont* factors weigh in favor of likelihood of confusion, heavily so for Class 41. When considered in their entirety, Applicant's KID CHRISTIAN mark is similar to the cited CHRISTIAN mark because they share the same distinctive word, also weighing in favor of likelihood of confusion. The sixth *DuPont* factor is neutral, and there is no evidence regarding the remaining factors. Weighing the factors, we find that confusion is likely when Applicant's mark and Registrant's mark are used with their respective identified goods and services.

**Decision:** The refusal to register Applicant's mark under Trademark Act Section 2(d) is affirmed as to both Classes 25 and 41.