

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: July 2, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re International Foodstuffs Co. LLC*  
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Serial No. 97444079  
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Nicholas D. Wells of Legends Law Group PLLC,  
for International Foodstuffs Co. LLC.

Megan Hartnett, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

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Before Lykos, Johnson, and Allard, Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:<sup>1</sup>

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<sup>1</sup> As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, citations in this order are in the form recommended in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2024). This order 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 page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For orders of the Board, this order employs citations to the Lexis legal database and cites only precedential decisions unless otherwise indicated. Practitioners should also adhere to the practice set forth in TBMP § 101.03. Precedential decisions of the Board, and precedential decisions of the Federal Circuit involving Board decisions that issued January 1, 2008, or after may be viewed in TTABVUE by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent. Many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB Reading Room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

International Foodstuffs Co. LLC (“Applicant”) seeks registration on the Principal Register of the mark BRONKO (in standard characters) for “Chocolates and Chocolate Confectionery Products; Biscuits; cookies; Ice Cream; Pasta,” in International Class 30.<sup>2</sup>

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used with the above-identified goods, so resembles the mark BRONCO BERRY SAUCE (in typeset format, “BERRY SAUCE” disclaimed) registered on the Principal Register for “Sauce,” in International Class 30,<sup>3</sup> that it is likely to cause confusion or mistake, or to deceive. Registration was also refused on the ground that Applicant failed to provide an acceptable identification of goods as required by Trademark Rule 2.32(a)(6), 37 C.F.R. §2.32(a)(6), for “Chocolates and Chocolate Confectionery Products.”

After the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

#### I. Evidentiary Issue

The Examining Attorney objects to the third-party registration cited in Applicant’s brief at 4 TTABVUE 5, which was not introduced into the record during

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<sup>2</sup> Application Serial No. 97444079 was filed on June 6, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce.

<sup>3</sup> Registration No. 2299866 was issued on December 14, 1999; renewed.

Prior to November 2, 2003, “standard character” drawings were known as “typed” or “typeset” drawings. *See In re Viterra Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012) (“[U]ntil 2003, ‘standard character’ marks formerly were known as ‘typed’ marks[.]”). A typed or typeset mark is the legal equivalent of a standard character mark. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 807.03(i) (May 2024).

prosecution.<sup>4</sup> The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). Therefore, the objection is sustained, and this evidence, together with any arguments based on it, have been given no consideration. *See In re Inn at St. John's, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at \*3-5 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Comm'ns S.p.A*, Ser. No. 79099154, 2014 TTAB LEXIS 29, at \*11 (TTAB 2014).

## II. Indefinite Identification of Goods

The application as-filed identified the following goods: “Chocolates and Chocolate Confectionery Products; Biscuits; cookies; Ketchup and Sauces being condiments; Ice Cream; Pasta.” In the first Office Action, in addition to the refusal under Section 2(d) mentioned above, the Examining Attorney also required an amendment to the identification of goods as to “Chocolates and Chocolate Confectionery Products.”<sup>5</sup> The Examining Attorney explained that this portion of the identification is indefinite and must be clarified “because it could encompass chocolate confections, chocolate candy,

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<sup>4</sup> 6 TTABVUE 3.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval (“TSDR”) system. Citations to the record throughout the decision include references to TTABVUE, the Board's online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry. *See Made in Nature, LLC v. Pharmavite LLC*, 2022 TTAB LEXIS 251, at \*2 n.1 (TTAB 2022).

<sup>5</sup> March 27, 2023 Office action at 6.

etc.” and proposed an acceptable identification which could be substituted, if accurate.<sup>6</sup>

Applicant responded by deleting “Ketchup and Sauces being condiments” from its identification in an attempt to obviate the refusal under Section 2(d), but Applicant did not amend the “Chocolates and Chocolate Confectionery Products” portion of the identification or submit arguments against the requirement to clarify it.<sup>7</sup> The Examining Attorney subsequently made final the indefiniteness refusal as to “Chocolates and Chocolate Confectionery Products.”<sup>8</sup>

Applicant did not address the identification issue in its brief, choosing instead to focus solely on the merits of the likelihood of confusion refusal, and Applicant did not file a reply brief.<sup>9</sup> The Examining Attorney requests affirmance of the refusal to register on this ground.<sup>10</sup>

Because the Examining Attorney has maintained the indefiniteness refusal on appeal and because Applicant did not address the issue on appeal, Applicant’s ability to contest the refusal to register its mark on the ground that the articulated goods are indefinite is therefore forfeited and/or waived. *See, e.g., In re Black Card, LLC*, Ser. No. 90641690, 2023 TTAB LEXIS 478, at \*29 (TTAB 2023) (applicant who did not address indefiniteness issue on appeal waived its ability to contest the refusal on

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

<sup>7</sup> June 2, 2023 Response to Office action at TSDR 1-2.

<sup>8</sup> July 10, 2023 Office action at TSDR 6-7.

<sup>9</sup> 4 TTABVUE.

<sup>10</sup> 6 TTABVUE 3.

that ground). Therefore, the refusal on this ground is affirmed. *Id.*; *In re tapio GmbH*, Ser. No. 87941532, 2020 TTAB LEXIS 483, at \*23-24 (TTAB 2020).

### III. Likelihood of Confusion

For completeness, we also address the Examining Attorney's likelihood of confusion refusal.

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, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). In considering the evidence of record bearing 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, 1103 (CCPA 1976).

We have considered each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). Moreover, “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, 1199 (CCPA 1973). In

this matter, Applicant and the Examining Attorney address only the first and second *DuPont* factors.

A. The Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, considering their appearance, sound, meaning and commercial impression. *DuPont*, 476 F.2d at 1361; *see also In re Detroit Athletic Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's*, 2018 TTAB LEXIS 170, at \*13 (quoting *In re Davia*, Ser. No. 85497617, 2014 TTAB LEXIS 214, at \*3-4 (TTAB 2014)).

The test is not whether the marks can be distinguished in 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. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053 (Fed. Cir. 2012).

The marks "must be considered ... in light of the fallibility of memory ...." *In re St. Helena Hosp.*, 774 F.3d 747, 1751 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 685 (CCPA 1977)). Therefore, the focus is on the recollection of the average consumer – here, the purchaser of ordinary food products, i.e., chocolate confectionery products; biscuits; cookies; ice cream; pasta and sauces – who normally retains a general rather than a specific impression of

trademarks. *In re Info. Builders*, Ser. No. 877539642020, TTAB LEXIS 20, at \*21-22 (TTAB 2020).

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. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (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.”). In some circumstances however, “one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark.” *Leading Jewelers Guild, Inc. v. LJOW Holdings LLC*, Opp. No. 91160856, 2007 TTAB LEXIS 35, at \*14 (TTAB 2007); *Nat'l Data*, 753 F.2d at 1058 (“[T]here 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.”). That is, more or less weight may be 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, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1322 (Fed. Cir. 2014).

As an initial matter, we find BRONCO is the dominant portion of Registrant’s mark, as it is the first term in the mark. *See, e.g., Century 21 Real Est. Corp. v. Century Life of Am.*, 970 F.2d 874, 876 (Fed. Cir. 1992) (upon encountering the marks,

consumers will first notice the identical lead word); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, Opp. No. 74797, 1988 TTAB LEXIS 60, at \*8 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered[.]”). Moreover, Registrant’s disclaimer of the terms BERRY SAUCE supports our finding, as disclaimed terms have less source-identifying significance. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997).

Applicant’s mark BRONKO and the dominant element BRONCO of Registrant’s mark are almost identical in appearance. The only difference is that Registrant’s mark is the familiar word BRONCO,<sup>11</sup> while Applicant’s mark is a slight misspelling of it, substituting a “K” for the “C”. While we do not ignore this difference, we find that the marks nonetheless look nearly identical. *See Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 1549 (Fed. Cir. 1990) (finding TMM confusingly similar to TMS); *In re Lamson Oil Co.*, Serial No. 600158, 1987 TTAB LEXIS 34, at \*3 (TTAB 1987) (finding TRUCOOL and TURCOOL similar in appearance); *see also Elizabeth Arden Sales Corp. v. Faberge, Inc.*, 304 F.2d 891, 892 (CCPA 1962) (“[T]he words Extraordinaire and Extrordinaire [differing by one letter] are the same for all practical purposes[.]”).

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<sup>11</sup> We take judicial notice that the word “Bronco” means an untrained or partially trained horse or pony of western North America. THE AMERICAN HERITAGE DICTIONARY, (<https://ahdictionary.com/word/search.html?q=bronco>) (accessed on June 28, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, Ser. No. 85214191, 2014 TTAB LEXIS 94, at \*6 n.4 (TTAB 2014).

Because Applicant's BRONKO is likely to be perceived as a slight misspelling of the known word BRONCO, it is likely to be pronounced the same as BRONCO. *See, e.g., In re Viterra*, 671 F.3d at 1367 (XCEED and X-SEED pronounced similarly). Applicant does not dispute that its mark may be perceived as a misspelling of the term BRONCO, nor does Applicant dispute the phonetic similarity of the terms, but argues that this alone is not enough to find the marks similar.<sup>12</sup>

Because Applicant's mark BRONKO is a slight misspelling of BRONCO and likely to be perceived as such, it is likely to connote the same or similar meaning and create the same or similar commercial impression. *See, e.g., Boliden AB v. Bolidt Maatschappij tot Exploitatie van Kunststoffen en Bouwwerken B.V.*, Ser. No. 21403, 1980 TTAB LEXIS 45, at \*8-9 (TTAB 1980) (BOLIDT and BOLIDTAN are similar in sound and appearance to opposer's mark BOLIDEN and create substantially the same commercial impressions).

Applicant argues that because Applicant's goods will be sold from display racks, the visual differences are most important and this alone is enough to render the marks dissimilar.<sup>13</sup> However, the fact that the goods may be sold from display racks is irrelevant because we must compare Applicant's mark as shown in the drawing to the cited registration, and as discussed above, when making such a comparison, we

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<sup>12</sup> 4 TTABVUE 3-5.

<sup>13</sup> Applicant argues that the cited mark "includes a more common spelling of the word BRONCO, as found in hundreds of other marks." 4 TTABVUE 5. However, there is no evidence of any third-party registrations or third-party uses of record to support this argument. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) ("Attorney argument is no substitute for evidence.").

find Applicant's mark and the BRONCO portion of the cited mark to be visually very similar and phonetically identical. Moreover, similarity in sound alone is sufficient to support a finding that the compared marks are confusingly similar. *In re 1st USA Realty Prof'ls, Inc.*, Ser. No. 78553715, 2007 TTAB LEXIS 73, at \*16 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Co.*, Opp. No. 7897, 390 F.2d 728, 732 (CCPA 1968)).

This factor weighs in favor of confusion.

#### B. The Similarity or Dissimilarity and Nature of the Goods

Turning to the second *DuPont* factor, we now compare the goods as they are identified in the involved application and cited registration. *See In re Detroit Athletic*, 903 F.3d at 1306; *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 942-43 (Fed. Cir. 1990). The goods 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); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). The goods 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." *See Coach Serv. 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)). Evidence of relatedness includes, for example, advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer, and/or copies of prior use-based registrations of the same mark covering both an applicant's and registrant's

identified goods. *See, e.g., In re Davia*, 2014 TTAB LEXIS 214, at \*25 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

The Examining Attorney made of record the following third-party website evidence showing that “sauces” (as identified in the involved registration) and “Chocolates and Chocolate Confectionery Products; Biscuits; cookies; Ice Cream; Pasta” (as identified by Applicant) are offered under the same mark:<sup>14</sup>

- <https://hillsidelanefarm.com> offering savory and sweet sauces, and cookies.<sup>15</sup>
- <https://mycadia.com/> offering sauces, cookies and pasta.<sup>16</sup>
- <https://www.goya.com/> offering sauces, cookies and pasta<sup>17</sup>
- <https://www.delallo.com/> offering sauces, pasta, and cookies.<sup>18</sup>
- <https://shop.lovesicecream.com/> offering sweet sauces, ice cream, and chocolates.<sup>19</sup>
- <https://www.graeters.com> offering sweet sauces, ice cream, and chocolates.<sup>20</sup>

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<sup>14</sup> We consider the full scope of the goods recited in the application and cited registration. *See In re Country Oven*, Ser. No. 87354443, 2019 TTAB LEXIS, at \*11 (TTAB 2019) (“[A] registration that describes goods broadly is presumed to encompass all goods or services of the type described.”). Accordingly, “sauces” in the cited registration is broad enough to encompass, for example, both sweet sauces, such as chocolate sauce, and savory sauces, such as tomato and pizza sauces.

<sup>15</sup> March 27, 2023 Office action at TSDR 27-36.

<sup>16</sup> *Id.* at 37-45.

<sup>17</sup> *Id.* at 46-57.

<sup>18</sup> *Id.* at 58-72.

<sup>19</sup> *Id.* at 73-75.

<sup>20</sup> *Id.* at 76-90.

- <https://www.raos.com/> offering pasta and sauces.<sup>21</sup>
- <https://www.barilla.com/> offering pasta and sauces.<sup>22</sup>
- <https://www.giovanniranausa.com/> offering pasta and sauces.<sup>23</sup>
- <https://buitoni.com/> offering pasta and sauces.<sup>24</sup>
- <https://www.worldmarket.com/p/regioni> offering pasta and sauces under the Regioni D'Italia brand.<sup>25</sup>
- <https://www.ghirardelli.com/> offering chocolates and sweet sauces.<sup>26</sup>
- <https://www.williams-sonoma.com/> offering sweet sauces, cookies, and chocolates.<sup>27</sup>
- <https://www.stonewallkitchen.com/> offering sweet sauces, chocolate confections, cookies, and biscuits.<sup>28</sup>
- <https://elbowchocolates.com/> offering sweet sauces, chocolates, and chocolate confections.<sup>29</sup>
- <https://frans.com/> offering sweet sauce and chocolates.<sup>30</sup>
- <https://bedrechocolates.com/> offering chocolate sauces, and chocolate confections.<sup>31</sup>

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<sup>21</sup> July 10, 2023 Office action at TSDR at 8-13.

<sup>22</sup> *Id.* at 14-32.

<sup>23</sup> *Id.* at 33-35.

<sup>24</sup> *Id.* at 36-43.

<sup>25</sup> *Id.* at 44-47.

<sup>26</sup> *Id.* at 48-52.

<sup>27</sup> *Id.* at 53-57.

<sup>28</sup> *Id.* at 58-61.

<sup>29</sup> *Id.* at 62-67.

<sup>30</sup> *Id.* at 68-69.

<sup>31</sup> *Id.* at 70-72.

- <https://www.littlegicecreamco.com/> offering sweet sauces and ice cream.<sup>32</sup>
- <https://www.theicecreamsmith.com/> offering ice cream and sweet sauces.<sup>33</sup>
- <https://shop.clumpies.com/> offering ice cream and sweet sauces.<sup>34</sup>

This evidence shows that it is commonplace in the relevant industry for a single entity to offer sauces as well as chocolates and chocolate confectionery products, biscuits, cookies, ice cream, and pasta under the same mark. As such, consumers are familiar with these goods being offered through a single source under a single mark and through the same channels of trade.

Additionally, the Examining Attorney made of record the following seven use-based, third-party registrations showing that the same entities have registered single marks identifying both Applicant's and Registrant's identified goods:

- FRIKA-K (Reg. No. 6394151) for various sauces, cookies, pasta, and biscuits.<sup>35</sup>
- SERIOUSLY HABITAT-FORMING (Reg. No. 6975796) for sauces and cookies.<sup>36</sup>
- VEGGIE MIX 100% VEGETARIAN PRODUCTS GOURMET SEASONING (Reg. No. 6935345) for sauces, ice cream, cookies, and pasta.<sup>37</sup>
- WELLESLEY FARMS (Reg. No. 6577832) for sauces, ice cream, cookies, and pasta.<sup>38</sup>

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<sup>32</sup> *Id.* at 73-74.

<sup>33</sup> *Id.* at 75-77.

<sup>34</sup> *Id.* at 78-81.

<sup>35</sup> March 27, 2023 Office action at TSDR 12-13.

<sup>36</sup> *Id.* at 14-15.

<sup>37</sup> *Id.* at 16-17.

<sup>38</sup> *Id.* at 18-20.

- COOKBOOK (Stylized) (Reg. No. 7003940) for sauces, cookies and pasta.<sup>39</sup>
- RUBIX FOODS (Reg. No. 6769436) for sauces and ice cream.<sup>40</sup>
- NONNA CARMEN (Reg. No. 6966476) for cookies, sauces, and pasta.<sup>41</sup>

In sum, the third-party use evidence is highly probative of the relatedness of the goods when considered together with the third-party registration evidence discussed above. *See, e.g., In re C.H. Hanson Co.*, Ser. No. 77983232, 2015 TTAB LEXIS 357, at \*14-18 (TTAB 2015) (six websites showing sale of the subject goods, coupled with five third-party registrations of marks for them, “support the conclusion that the goods are related”); *In re Davey Prods.*, Ser. No. 77029776, 2009 TTAB LEXIS 524, at \*14-18 (TTAB 2009) (two websites showing sale of the subject goods, coupled with 21 third-party registrations of marks for them, supported finding of relatedness). We find that Applicant’s identified goods are related to those identified in the cited registration. Consequently, Applicant’s arguments that the goods “simply are not related[,]” are unpersuasive.<sup>42</sup> This factor also weighs in favor of finding a likelihood of confusion.

### C. Balancing the *DuPont* Factors

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. Weighing the *DuPont* factors for which there has been

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<sup>39</sup> *Id.* at 21-22.

<sup>40</sup> *Id.* at 23-24.

<sup>41</sup> *Id.* at 24-26.

<sup>42</sup> 4 TTABVUE 7-8. To the extent Applicant’s arguments address “breakfast cereals,” which are not recited in either Applicant’s or Registrant’s identification, this argument is moot. 4 TTABVUE 8.

evidence and argument, the similarities of the marks (particularly their phonetic identity and their visual similarities), coupled with the relatedness of the goods weigh in favor of a likelihood of confusion. Accordingly, we find that confusion is likely between Applicant's involved mark and the mark in the cited registration for the identified goods.

**Decision**

Applicant waived its appeal of the refusal based on the requirement to submit a definite identification of goods; therefore, that ground for refusal is affirmed. We also affirm the refusal to register Applicant's mark under Section 2(d) of the Trademark Act.