

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

Mailed: February 12, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Amore Food Group LLC

Serial Nos. 97524502 and 97558843¹
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for Amore Food Group LLC.

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

Opinion by O'Connor, Administrative Trademark Judge:

Amore Food Group LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark PIZZERIA SAPIENZA and the composite mark

PIZZERIA SAPIENZA and design, displayed as , both for

¹ Because the cases have common questions of law and fact, and nearly identical records, the Board has consolidated the appeals and is issuing a single opinion. *See In re Pohl-Boskamp GmbH & Co.*, Ser. Nos. 85007428, 85008626, 2013 TTAB LEXIS 7, at *2 (TTAB 2013) (two appeals involving common issues of law and fact with similar records decided in single opinion); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 1214 (2024). Unless otherwise noted, Trademark Status & Document Retrieval (“TSDR”) record citations and TTABVUE docket entries are to Serial No. 97524502, the parent case.

restaurant and catering services; pizza parlor, in International Class 43.²

The Trademark Examining Attorney finally refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that each mark, when used on or in connection with the identified services, so resembles the mark SAPIENZA, in standard characters, registered on the Principal Register for “bakery products, namely, cream puffs, cannoli, eclairs and assorted pastries” in International Class 30, as to be likely to cause confusion, mistake or deception.³

When the refusal was made final in each application, Applicant appealed and requested reconsideration. After the Examining Attorney denied the requests for reconsideration, the appeals were resumed and are now fully briefed.⁴ We affirm the refusal in each application.

² Application Serial No. 97524502 (standard characters) was filed on July 28, 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 since at least as early as June 6, 1990.

Application Serial No. 97558843 (composite) was filed on August 22, 2022, also under Section 1(a) of the Trademark Act, based on Applicant’s claim of first use anywhere and in commerce since at least as early as July 30, 2018, and includes the following description: “The mark consists of one half of a pizza with a slice pulled out to the left of a vertical line and the stacked words ‘PIZZERIA SAPIENZA.’” Color is not claimed as a feature of the mark.

Both applications include a disclaimer of PIZZERIA and the following translation statement: “The English translation of SAPIENZA in the mark is wisdom.”

³ Reg. No. 2011687 issued on October 29, 1996 with a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). The registration has been renewed, and includes the following translation statement: “The English translation of ‘SAPIENZA’ is ‘wisdom.’”

⁴ Applicant filed a reply brief only in Application Serial No. 97524502. 9 TTABVUE.

I. 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).⁵

Our determination under Trademark Act Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (setting forth factors to be considered, referred to herein as “*DuPont* factors”); *see In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1380-81 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence. *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 and/or services. *E.g., In re Chatam Int’l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)

⁵ As part of an internal pilot program on broadening acceptable forms of legal citation in Board cases, this opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d or F.4th). For decisions of the Board, this opinion cites the Lexis database. Practitioners should adhere to the practice set forth in TBMP § 101.03.

(“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 Marks

In considering the similarity or dissimilarity of the marks, we compare Applicant’s marks PIZZERIA SAPIENZA (in standard characters) and , and the cited registered mark SAPIENZA (in standard characters), “in their entirety as to appearance, sound, connotation and commercial impression.” *In re Detroit Ath. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). “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 v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373 (Fed. Cir. 2018) (citation omitted). Further, the marks “must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison.” *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (cleaned up). We focus on the recollection of the average consumer, who normally retains a general rather than a specific impression of trademarks. *In re Bay State Brewing Co., Inc.*, Ser. No. 85826258, 2016 TTAB LEXIS 46, at *6 (TTAB 2016) (citing *Spoons Rests., Inc. v. Morrison Inc.*, Opp. Nos. 79317 and 79319, 1991 TTAB LEXIS 53, at *18 (TTAB 1991), *aff’d per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)).

Because similarity is determined based on the marks in their entireties, our analysis is not predicated on dissecting the marks into their various components. *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.”). On the other hand, “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). For instance, as the Federal Circuit has observed, “[t]hat a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark” *Id.*

When considered in their entireties, we find Applicant’s marks to be similar to Registrant’s mark in appearance, sound, connotation and commercial impression, due to the shared term “Sapienza.” Applicant’s marks incorporate Registrant’s entire mark, to which Applicant has added the word “Pizzeria,” and, in the case of the composite mark, an image of half of a pizza with a slice pulled away. While there is no rule that a likelihood of confusion is present where one mark encompasses another, in this case, as in many others, the fact that Applicant’s marks include the entirety of Registrant’s mark increases the similarity between them. *See, e.g., Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 1022-23 (CCPA 1977) (finding CALIFORNIA CONCEPT marks substantially similar to prior mark CONCEPT); *Coca-Cola*

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Bottling Co. of Memphis, Tenn., Inc. v. Joseph E. Seagram and Sons, Inc., 526 F.2d 556, 557-58 (CCPA 1975) (applicant's mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin).


There is no evidence that “Sapienza,” which the applications and registration translate to “wisdom,” has any meaning or significance when used in connection with the identified goods or services, and there is no evidence of use or registration by third parties of similar marks on similar goods or services that might weaken the source-identifying capacity of “Sapienza” for those goods and services. *Cf. Juice Generation, Inc. v. GS Enters LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015) (proper to consider “whether and to what degree the extensive evidence of third-party use and registrations indicates that the phrase PEACE & LOVE carries a suggestive or descriptive connotation in the food service industry, and is weak for that reason”).

On the other hand, “Pizzeria” is generic for Applicant’s identified “pizza parlor” services, and appropriately has been disclaimed. Descriptive or generic matter typically is less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (DELTA, not the disclaimed generic word CAFÉ, is the dominant portion of the mark THE DELTA CAFÉ and design); *see also Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947 (Fed. Cir. 2000) (quoting *Nat’l Data.*, 753 F.2d at 1060 (the “descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion”). Applicant “does not disagree that ‘SAPIENZA’ is the dominant element of its mark.”⁶

⁶ 6 TTABVUE 9.

We find it proper to give “Pizzeria” less weight here, where consumers likely will view the term “Pizzeria” in Applicant’s marks in its generic sense, rather than as a source-distinguishing element. The Examining Attorney did not ignore the additional word “Pizzeria,” but gave it less weight, for rational reasons, including that “purchasers would be more inclined to use SAPIENZA when referring to the services as opposed to the generic term PIZZERIA that describes every pizza restaurant in America.”⁷ Thus, even as the first word, the additional, generic term “Pizzeria” does not create significant visual or phonetic distinctions between the marks. *Cf. In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010) (“the presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical”).⁸



As for Applicant’s composite mark , the pizza design, while creating some degree of visual distinction, does not overwhelm, detract from or change the commercial impression of the literal elements. Although we consider marks in their entireties, wording often is considered the dominant feature of a mark comprising both literal and design elements because it is most likely to indicate the

⁷ 8 TTABVUE 3-4.

⁸ Applicant cites a number of cases to support its argument that the marks are not confusingly similar despite sharing the word “Sapeinza,” especially because its marks add “Pizzeria.” 6 TTABVUE 5-7. Yet, in those cases the shared terms were weak source indicators or were combined with terms that were non-descriptive or non-generic. Applicant’s reliance on *Mother’s Rest. Inc. v. Mother’s Bakery, Inc.*, 498 F. Supp. 847 (W.D.N.Y. 1980), 6 TTABVUE 11-12, is also misplaced. That case involved an infringement claim and has no bearing on whether confusion is likely in the context of an application to register the marks before us.

source of the goods and services. *See In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“In the case of a composite mark containing both words and a design, ‘the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.’”) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983)). The words are likely to make a greater impression upon purchasers than the design and would be remembered by them and used by them to request the goods and services. *See id.* This general principle applies here, where the design element in Applicant’s composite mark would not be verbalized. Rather, when viewed with the literal elements PIZZERIA SAPIENZA, the pizza design serves as a visual cue that reinforces the generic meaning of “Pizzeria.” *See In re St. Julian Wine Co.*, Ser. No. 87834973, 2020 TTAB LEXIS 196, at *18 (TTAB 2020) (stylized apple design in cited registrations “serves to reinforce the generic wording APPLES in the mark”) (citation omitted). Consumers are not likely to rely on the pizza design as a source indicator.

Nor does the stylization of the words in the composite mark distinguish the marks, as the cited mark SAPIENZA is registered in standard character form and can be depicted in any font style, size or color, including in a manner similar to the words in Applicant’s composite mark. *See Viterra*, 671 F.3d at 1363-65.

Applicant also contends that the marks differ in sound because PIZZERIA SAPIENZA uses a rhyming combination, rendering it more memorable than the cited mark SAPIENZA.⁹ Although “Pizzeria” and “Sapienza” both contain four syllables and end in a soft “a” sound, they do not otherwise rhyme, unlike the marks cited by

⁹ 6 TTABVUE 7.

Applicant (e.g., DUBBLEBUBBLE, MELLO YELLO, PIGGLY WIGGLY). Nor are we persuaded by the non-precedential decision involving the mark SKIN WITHIN, which presented a different commercial impression from WITHIN by virtue of the incongruity of its two terms.¹⁰ *Cf. Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 1108 (CCPA 1972) (ALL CLEAR was not likely to cause confusion with ALL because its commercial impression “is derived not from the component words ‘all’ or ‘clear,’ per se, but rather from the mark as a whole”). In contrast, here the word “Sapienza” dictates the pronunciation of each mark and the modest difference in sound from addition of the generic word “Pizzeria” does not overcome the identical sound of the dominant word “Sapienza.”

In addition, Applicant argues that when considered in their entirety, the marks have different meanings and impressions despite sharing the surname “Sapienza.”¹¹ According to Applicant, the different leading word “Pizzeria” in its mark “immediately conveys the nature of the listed services; namely, ‘restaurant and catering services; pizza parlors.’ In contrast, the Cited Mark SAPIENZA is a surname which merely connotes a family owned business.”¹² Although the marks must be compared in their entirety, Applicant’s argument goes too far. Applicant has provided no evidence of the prevalence of “Sapienza” as a surname in the United

¹⁰ As a non-precedential Board decision, this case is not binding on the Board. *See In re Procter & Gamble Co.*, Ser. Nos. 77685045 and 77685052, 2012 TTAB LEXIS 447, at *5 (TTAB 2012) (citation to non-precedential opinions permitted but not encouraged; nonprecedential decisions not binding on the Board).

¹¹ 6 TTABVUE 8-9.

¹² 6 TTABVUE 9 (emphasis omitted).

States and does not argue that it is a weak source indicator.¹³ Even if “Sapienza” conveys the impression of a surname, it would connote a family owned business—branded under the same family name—in **both** the cited mark **and** Applicant’s marks. Further, as explained above, the generic word “Pizzeria” and reinforcing image of a pizza in the composite mark are unlikely to change the marks’ overall commercial impressions. *See, e.g., Detroit Athletic*, 903 F.3d at 1304 (descriptive and disclaimed words “unlikely to change the overall commercial impression engendered by the marks”).

B. Similarity or Dissimilarity and Nature of the Goods and Services

Under the second *DuPont* factor we consider the similarity or dissimilarity and nature of the goods or services. *DuPont*, 476 F.2d at 1361. In doing so, we compare the goods and services as they are identified in the applications and registration. *See, e.g., Detroit Athletic*, 903 F.3d at 1306; *see also Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002).

The goods and services 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). Instead,

¹³ 6 TTABVUE; 9 TTABVUE. In its reply, Applicant contends that “[t]he Examining Attorney’s statement that the surname SAPIENZA is arbitrary and strong is simply incorrect.” 9 TTABVUE 3 (citing 8 TTABVUE 7). The Examining Attorney did not argue that “Sapienza” is arbitrary and strong in the abstract, but distinguished it from the word “Mother’s” at issue in the district court case cited by Applicant. “Mother’s” was shown to be commonly used with restaurants and bakeries, suggesting motherhood, home and family, whereas “Sapienza” has “no such symbolic importance or sentiment,” nor is there evidence of common use. 8 TTABVUE 7.

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likelihood of confusion can be found if the goods and services “are 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)). “[I]t is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 TTAB LEXIS 178, at *9 n.5 (TTAB 2015); *see also Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336 (CCPA 1981).

Here, the applications identify “restaurant and catering services; pizza parlor,” whereas the cited registration identifies “bakery products, namely, cream puffs, cannoli, eclairs and assorted pastries.” Although likelihood of confusion often has been found where similar marks are used in connection with both restaurant services and food products, there is no per se rule that they are related simply because restaurants serve food. *See Lloyd’s Food Prods., Inc. v. Eli’s, Inc.*, 987 F.2d 766, 768 (Fed. Cir. 1993); *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 TTAB LEXIS 381, at *17 (TTAB 2019). Instead, the evidence “must show **something more** than that similar or even identical marks are used for food products and for restaurant services.” *In re Coors Brewing Co.*, 343 F.3d 1340, 1345 (Fed. Cir. 2003) (emphasis in original) (quoting *Jacobs v. Int’l Multifoods Corp.*, 668 F.2d 1234, 1236 (CCPA 1982)).

In support of the refusal, the Examining Attorney submitted website evidence of ten businesses offering pizza parlor services as well as pastries, including:

- Savoia Pastry Shoppe offers “fresh baked breads, pizza, and pastries,” including “Italian & Specialty Pastries,” cream puffs, cannoli and eclairs¹⁴
- Tyler’s Pizzeria and Bakery offers pizza as well as pastries including croissants, muffins, Danish, brownies and cookies¹⁵
- Honeymoon Bakery & Pizzeria offers “Baked goods & artisanal sourdough pizza,” including fruit tarts and meringues¹⁶
- Prosperity Kitchen & Pantry offers pizza and various hand-baked pastries¹⁷
- Kilauea Bakery & Pizzeria offers fresh-baked pastries including eclairs and cream puffs as well as pizza¹⁸
- Tripoli Pizza Bakery offers pizza and baked goods including cannoli and other pastries; “Tripoli Bakery and Pizza is known for fine Italian baked goods and signature pizza – a reputation for quality enjoyed by customers for nearly a century!”¹⁹
- Alpine Bakery and Pizzeria offers pizza and baked goods including pastries that are “lovingly baked and decorated to perfection”²⁰ and
- Nabolom Bakery offers pizza and bakery items including eclairs.²¹

The Examining Attorney also made of record a number of third-party use-based registrations, owned by different parties, identifying goods and services including one or more of Applicant’s services and one or more of Registrant’s goods, including:

¹⁴ May 16, 2023 Office Action, TSDR 14-20.

¹⁵ *Id.* at 22-23.

¹⁶ *Id.* at 25-26.

¹⁷ July 21, 2023 Final Office Action, TSDR 8-9.

¹⁸ *Id.* at 15-17.

¹⁹ *Id.* at 20-21.

²⁰ *Id.* at 26-28.

²¹ *Id.* at 29-33. The evidence also included screenshots from the websites of Crispelli’s Bakery Pizzeria (offering pizza and bakery, but not showing pastries per se) and California Pizza Kitchen (offering pizza and desserts, but not stating that they are baked on the premises), *id.* at 11-13, 22-25. We do not find these websites particularly probative.

- CECI CELA, Reg. No. 5245447 (“bakery goods and dessert items, namely, ... pastries, ... eclairs, ... for retail and wholesale distribution and consumption on or off the premises” and “café and restaurant services”)²²
- MOCHIHOLIC. (stylized), Reg. No. 7162926 (“bakery desserts; bakery goods and dessert items, namely, ... pastries ... for retail and wholesale distribution and consumption on or off the premises” and “catering services; ... restaurant and café services”)²³
- GO HAPPY, Reg. No. 7151168 (“bakery goods; pastries; ... pizza” and “providing of food and drink; restaurant services; ... pizza parlors”)²⁴
- PIZZA TWIST, Reg. No. 6157186 (“pizza; calzones; breadsticks; pasta; cookies; brownies; pastries” and “pizza parlors; restaurant services”)²⁵
- ROYERS and design, Reg. No. 7277609 (“bakery desserts; bakery goods; bakery goods, namely, ... pastries, and sweet bakery goods” and “catering services; restaurant services, including sit-down service of food and take-out restaurant services”)²⁶
- HONEYPIE MILW, WI and design, Reg. No. 7222248 (“bakery goods and dessert items, namely, ... pastries ... for retail and wholesale distribution and consumption on or off the premises” and “restaurant services; catering services”)²⁷
- CACIA’S BAKERY, Reg. No. 4379128 (“bakery desserts; ... bakery products; bakery products, namely, sweet bakery goods; ... cannoli; ... eclairs ... fresh pasta; fresh pizza; ... pastries” and “delicatessen services; pizza parlors”)²⁸
- DISH and design, Reg. No. 7124690 (“bakery goods and dessert items, namely, ... pastries ... for retail and wholesale distribution and consumption on or off the premises” and “catering services; restaurant and catering services”)²⁹
- DOJIMA ROLL, Reg. 7031294 (“cream puffs” and “restaurant services”)³⁰

²² January 25, 2024 Denial of Request for Recon., TSDR 3-4.

²³ *Id.* at TSDR 7-8.

²⁴ *Id.* at TSDR 9-10.

²⁵ *Id.* at TSDR 11-12.

²⁶ *Id.* at TSDR 13-14.

²⁷ *Id.* at TSDR 15-16.

²⁸ *Id.* at TSDR 17-19.

²⁹ *Id.* at TSDR 20-21.

³⁰ *Id.* at TSDR 22-23.

- THE SICILIAN BAKER CANNOLI BAR & MARKET TRD MRK and design, Reg. No. 6117257 (“cannoli; ... pastries” and “catering services; ... restaurant and café services”)³¹
- CONNIE’S (stylized), Reg. No. 4318387 (“prepared foods, namely, ... pizza, ... cannolis” and “restaurants; restaurant services; ... catering of food and drinks”)³²
- CAFE POETES, Reg. No. 5596213 (“bakery goods, namely, sweet and savory eclairs” and “restaurant and café services”)³³
- BLUE BAKER CRAFT BAKERY & PIZZERIA, Reg. No. 7240902 (“pastries; pizza; ... bakery desserts; bakery goods; bakery products” and “catering of food and drinks; ... restaurant services”)³⁴
- SUGAR ‘N GLITZ (stylized), Reg. No. 7216764 (“bread and pastry; ... bakery goods and dessert items, namely, ... pastries ... for retail and wholesale distribution and consumption on or off the premises” and “mobile café services for providing food and drink; mobile catering; mobile restaurant services; providing of food and drink via a mobile truck”)³⁵
- THE PASTA BROS. FRESH | HOMEMADE | CUSTOM BUILT and design, Reg. No. 5764819 (“cannoli” and “restaurant; restaurant services featuring Italian cuisine; restaurant services, namely, providing of food and beverages for consumption on and off the premises; restaurant, bar and catering services”)³⁶
- THE BLENDED BAKERY, Reg. No. 6995075 (“pastries” and “catering services; restaurant services”)³⁷
- KNEADERS BAKERY & CAFÉ and design, Reg. No. 6114223 (“pastries and bakery goods; bakery products, namely, ... pastries ...; bakery desserts, namely, ... eclairs” and “restaurant and restaurant services; take-out restaurant services; catering and catering services”)³⁸

³¹ *Id.* at TSDR 24-25.

³² *Id.* at TSDR 26-27.

³³ *Id.* at TSDR 28-29.

³⁴ *Id.* at TSDR 30-31.

³⁵ *Id.* at TSDR 32-33.

³⁶ *Id.* at TSDR 34-36.

³⁷ *Id.* at TSDR 37-38.

³⁸ *Id.* at TSDR 39-40.



- *PIZZERIA MODERNA*, Reg. No. 4144979 (“pizza, ... pastries” and “restaurants, restaurant services, catering, carry-out restaurant services and pizza parlors”)³⁹ and
- SHIPLEY DO-NUTS and design, Reg. No. 5098616 (“eclairs; ... pastries” and “restaurant services”).⁴⁰

These third-party uses and registrations are probative of the relatedness of Applicant’s services and Registrant’s goods because they suggest that the identified services and goods are of a type that may emanate from the same source under the same mark. *See, e.g., Detroit Athletic*, 903 F.3d at 1306 (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”) (quoting *Hewlett-Packard*, 281 F.3d at 1267 (internal quotation marks omitted)); *Country Oven*, 2019 TTAB LEXIS 381, at *9-10 (“As a general proposition, third-party registrations that cover goods and services from both the cited registration and an Applicant’s application are relevant to show that the goods and services are of a type that may emanate from a single source under one mark.”); *In re Accelerate s.a.l.*, Ser. No. 77522433, 2012 TTAB LEXIS 43, at *10 (TTAB 2012) (five third-party registrations were probative of relatedness of coffee and services of “providing food and drink”).

³⁹ *Id.* at TSDR 41-42.

⁴⁰ *Id.* at TSDR 43-44. The evidence also included Reg. No. 5911706 for NEA PIZZERIA MODERNA and design, *id.* at 5-6, which registered under Trademark Act Section 44(e) with no evidence of a declaration of use filed to date. As such registrations lack probative value, we do not consider this registration. *See Made in Nature, LLC v. Pharmavite LLC*, Opp. Nos. 91223352, 91223683 and 91227387, 2022 TTAB LEXIS 228, at *30 (TTAB 2022).

This evidence also supports a finding of “something more,” as both the featured item of Applicant’s pizza parlor services and Registrant’s cannoli are known Italian foods. We take judicial notice that dictionary definitions of both “pizza” and “cannoli” refer to their Italian origins.⁴¹ *See In re Cordua Rests. LP*, Ser. No. 85214191, 2014 TTAB LEXIS 94, at *6 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594 (Fed. Cir. 2016) (Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions).

We find that the restaurant services identified in the applications are related to the food items identified in the cited registration. The third-party use and registration evidence submitted by the Examining Attorney shows that there are businesses offering restaurant services that also offer pastries baked on premises, as well as restaurants and pizza parlors that offer their own Italian pastries, including cannoli, under the same mark. Examples include Savoia Pasty Shoppe, Tripoli Bakery Pizza, CACIA’s BAKERY and THE PASTA BROS. FRESH | HOMEMADE | CUSTOM BUILT. There is a specific connection between Applicant’s pizza parlor services and Registrant’s cannoli because both are of Italian origin, satisfying the “something more” requirement. *Cf. In re Azteca Rest. Enters., Inc.*, Ser. No. 74666488,

⁴¹ COLLINS DICTIONARY defines “pizza” as “[a] baked Italian dish consisting of flattened bread dough covered variously with herbs, fresh vegetables, or, typically in the U.S., with tomato sauce, grated cheese, and, often, sausage, mushrooms, pepperoni, etc.” <https://www.collinsdictionary.com/us/dictionary/english/pizza>, accessed February 12, 2025 (citing WEBSTER’S NEW WORLD COLLEGE DICTIONARY, 4th Ed.). “Cannoli” is defined as “Italian pastry formed in tubes, deep-fried, and filled with sweetened ricotta cheese and, variously, chocolate, candied fruit, nuts, or liqueur.” <https://www.collinsdictionary.com/us/dictionary/english/cannoli>, accessed February 12, 2025 (citing WEBSTER’S NEW WORLD COLLEGE DICTIONARY, 4th Ed.).

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1999 TTAB LEXIS 29, at *6-8 (TTAB 1999) (affirming refusal to register AZTECA MEXICAN RESTAURANT as likely to cause confusion with cited marks including AZTECA for Mexican food items given relationship between Mexican restaurant services and Mexican food products).

C. Trade Channels, Classes of Consumers and Conditions of Purchase

The third *DuPont* factor considers the “similarity or dissimilarity of established, likely-to-continue trade channels,” and the fourth factor concerns the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ v. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361. Because the services in the applications and the goods in the cited registration are unrestricted as to trade channels and classes of purchasers, they are “presumed to be sold in all normal trade channels to all the normal classes of purchasers.” *Detroit Athletic*, 903 F.3d at 1308; see *Cunningham*, 222 F.3d at 948 (affirming Board’s reasoning that where the identification is unrestricted, “we must deem the goods to travel in all appropriate trade channels to all potential purchasers of such goods”). As Applicant contends, this certainly may include “bakeries and cafes such as the ‘Sapienza Bake Shop’ owned by the registrant,”⁴² but we may not restrict the channels to such businesses because this factor “must be evaluated with an eye toward the channels specified in the application and registration, not those as they exist in the real world.” *Detroit Athletic*, 903 F.3d at 1308. The record evidence of third party uses shows that the

⁴² 6 TTABVUE 12; Applicant’s January 22, 2024 Request for Recon., TSDR 4, 6-7.

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identified goods and services may be offered by the same businesses, to the same customers, namely, persons seeking restaurant or pizza parlor services and bakery goods such as cannoli or pastries. The channels of trade and consumers therefore overlap.

As for purchasing conditions and sophistication of consumers, Applicant argues (without citing any evidence) that “[c]ustomers looking for bakery products and the like are likely to conduct a sufficient degree of investigation and care to distinguish the goods/services offered under the respective marks.”⁴³ The Examining Attorney argues that “the purchase cost of bakery goods and eating at a pizzeria are relatively low cost items,”⁴⁴ which we find to be supported by the record evidence.⁴⁵ Where, as here, the goods and services “are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot*, 214 F.3d at 1329.

D. Length and Conditions of Concurrent Use without Actual Confusion

Applicant argues that the eighth *DuPont* factor, the “length of time and conditions under which there has been concurrent use without evidence of actual confusion,” 476

⁴³ 6 TTABVUE 12. *See also id.* at 3 (arguing, again without evidence, that the relevant customers are sophisticated). “Attorney argument is no substitute for evidence.” *Cai*, 901 F.3d at 1371 (citation omitted).

⁴⁴ 8 TTABVUE 13.

⁴⁵ *E.g.*, May 16, 2023 Office Action, TSDR 14-23 (Savoia Pastry Shoppe website lists individual pastries from \$1.10 to \$10.80 and trays from \$32.00 to \$74.40; pizza items range from \$3.90 to \$6.40); (Tyler’s Pizzeria and Bakery website lists pizza specials ranging from \$17.50 for pizza and cheesy bread to \$24 for two single-item pizzas); July 21, 2023 Final Office Action, TSDR 31 (Nabolom Bakery website lists pastries from \$3.50 to \$7.50).

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F.2d at 1361, weighs in its favor. Applicant submitted the declaration of Salvatore Sapienza, a managing member of Applicant, who attested that his father first opened a pizzeria under the PIZZERIA SAPIENZA mark in 1990 in Albany, New York, where it has operated ever since.⁴⁶ According to his declaration, after working at the Albany location for more than 25 years, in 2018 Mr. Sapienza opened a pizzeria in Charlotte, North Carolina under Applicant's PIZZERIA SAPIENZA mark.⁴⁷ Mr. Sapienza provided a screenshot ostensibly from Registrant's website stating that its bakery in Elmont, New York was renamed Sapienza Bake Shop in 1973.⁴⁸ Mr. Sapeinza attested that at no time was he (or to his knowledge anyone else associated with Applicant) contacted by anyone associated with Registrant regarding use of PIZZERIA SAPIENZA, and he is "unaware of any customers or other third parties confusing pizzerias operating under the mark PIZZERIA SAPIENZA with the source of bakery products sold under Registrant's mark SAPIENZA."⁴⁹ Applicant argues it has peacefully coexisted with Registrant, using their respective marks in the same state and 159 miles apart, for over 30 years, indicating that consumers are not likely to be confused.⁵⁰

The absence of evidence of actual confusion despite a period of concurrent use under the eighth *DuPont* factor has limited applicability in ex parte proceedings

⁴⁶ January 22, 2024 Request for Recon., TSDR 4.

⁴⁷ *Id.*

⁴⁸ *Id.*, TSDR 4, 6-7.

⁴⁹ *Id.*, TSDR 4-5.

⁵⁰ 6 TTABVUE 14.

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because Registrant is not a party and the evidence is necessarily limited. *See In re Guild Mortg. Co.*, Ser. No. 86709944, 2020 TTAB LEXIS 17, at *25 (TTAB 2020). Here, the record evidence does not support a finding that there were meaningful opportunities for confusion to occur. For most of the 30 years of use, Applicant's predecessor operated a single pizzeria in Albany, located in upstate New York, a different part of the state from Registrant's Elmont location on Long Island.⁵¹ Applicant opened a second pizzeria in 2018, but this was located in North Carolina. There is no evidence that Registrant has a presence in the upstate New York or North Carolina markets. *See id.* at *21-22 (stating that “[w]hile the evidence indicates that both Applicant and Registrant conduct business in California, there is no indication that they operate in the same city or metropolitan area,” and taking judicial notice of the distance between their respective locations). The eighth *DuPont* factor is neutral.

II. Conclusion


We have carefully considered, weighed and balanced all of the evidence made of record, and the arguments related thereto. *Charger Ventures*, 64 F.4th at 1384 (Board is to weigh the *DuPont* factors used in its analysis and explain the results of that weighing). Applicant's marks contain the entire registered mark SAPIENZA. Addition of the generic word “Pizzeria,” and design of a pizza and modest stylization to the words in the composite mark, does not meaningfully distinguish the marks.

⁵¹ THE COLUMBIA GAZETTEER OF THE WORLD, entries for Elmont, NY and Albany, NY, accessed February 12, 2024, <http://www.columbiagazetteer.org/main/ViewPlace/0/41873> (Elmont is on Long Island); <http://www.columbiagazetteer.org/main/ViewPlace/2303> (Albany county, which includes the city of Albany, is located north of New York City).

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There is evidence that Applicant's services and Registrant's goods are offered by the same businesses under the same marks, and the pizza served in Applicant's identified "pizza parlors" and the "cannoli" identified in the Registration are known Italian foods, satisfying the "something more" requirement. *Coors*, 343 F.3d at 1345. Accordingly, the first and second *DuPont* factors weigh in favor of a finding of likelihood of confusion. The channels of trade and classes of consumers overlap, and the goods and services are low-priced and subject to impulse purchase, with the third and fourth factors also weighing in favor of a finding of likelihood of confusion. The eighth factor is neutral in our analysis, and no *DuPont* factor weighs against such a finding.

We therefore conclude that confusion is likely between Applicant's marks

PIZZERIA SAPIENZA and , when used in connection with the services identified in the applications, and the cited mark SAPIENZA, when used in connection with the goods identified in the registration.

Decision: The refusal to register Applicant's marks under Trademark Act Section 2(d) is affirmed.