

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 14, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Tyler Clement
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Serial No. 97626706
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Brent T. Yonehara of Yonaxis I.P. Law Group,
for Tyler Clement.

Edward Fennessy, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

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Before Goodman, Thurmon, and Elgin,
Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:

I. Background

Tyler Clement (“Applicant”) seeks registration on the Principal Register of the standard character mark MOONSTONE RITUALS for goods ultimately identified as “Candles for home decor and modern living,” in International Class 4.¹

¹ Application Ser. No. 97626706 was filed on October 11, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s bona fide intent to use the mark in commerce. Applicant amended the identification of goods from “Candles” to “Candles for home decor and modern living” in his request for reconsideration. See June 7, 2024 Request

The Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that, as applied to the goods identified in the application, it so resembles the standard character mark MOONSTONE CHANDLERY ("chandlery" disclaimed) for "aromatherapy fragrance candles; candles," in International Class 4.²

When the refusal was made final,³ Applicant filed an appeal and requested reconsideration, which was denied.⁴ After the appeal was resumed, Applicant and Examining Attorney filed briefs.⁵ We have reviewed all of the evidence and arguments of record, though we do not necessarily address all of them in this opinion.

For the reasons set forth below, we affirm the refusal to register.

for Reconsideration at TSDR 11, 15. Although the amendment did not automatically populate in the Office's Trademark Status and Document Retrieval (TSDR) system as it should have, the Examining Attorney has acknowledged it is properly limiting, *see* 8 TTABVUE 6, and it has now been entered.

Citations in this opinion to the prosecution record refer to the .pdf version in the TSDR system. Citations to the briefs in the appeal record refer to the Board's TTABVUE docket system. *See In re Integra Biosciences Corp.*, Ser. No. 87484450, 2022 TTAB LEXIS 17, *6 (TTAB 2022). Pursuant to an internal Board pilot citation program, case 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 Board in the LEXIS legal database.

² Reg. No. 5843729, registered Aug. 27, 2019.

³ Dec. 8, 2024 Final Office Action.

⁴ *See* June 7, 2024 Request for Reconsideration; Aug. 19, 2024 Denial of Request for Reconsideration (4 TTABVUE).

⁵ Applicant's Brief and Reply Brief are at 6 and 9 TTABVUE. The Examining Attorney's Brief is at 8 TTABVUE.

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 likelihood of confusion under Section 2(d) of the Trademark Act is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also Charger Ventures*, 64 F.4th at 1379. “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 988 (Fed. Cir. 2020) (citation omitted).

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). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the [goods].” *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 TTAB LEXIS 14, *18 (TTAB 2023) (citing *Federated Foods, Inc. v. Ft. Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)). These factors, and others, are discussed below.

A. The Goods, Trade Channels and Classes of Consumers

The second and third *DuPont* factors address the relatedness of the goods and the trade channels in which they travel. Under the second factor, “likelihood of confusion

can be found ‘if the respective goods 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. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (internal citations omitted). In analyzing the relatedness of the goods, we look to the identifications in the application and cited registration. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018).

The cited registration’s broad recitation of “candles” encompasses all types of such goods, including Applicant’s candles that are intended for use in “home decor and modern living.” *See S.W. Mgmt., Inc. v. Ocinomled, Ltd.*, Con. Use No. 94002242, 2015 TTAB LEXIS 176, *60-61 (TTAB 2015) (where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein) (citation omitted); *In re Hughes Furniture Indus., Inc.*, Ser. No. 85627379, 2015 TTAB LEXIS 65, *10 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”). The goods, therefore, are legally identical in part.⁶

Furthermore, because we do not construe “candles for home decor and modern living” to be a particular type of candles but rather an intended purpose of their use, neither Applicant nor the registrant has limited their products to any particular type, type of consumer, or price point. We must assume that their goods include candles of all types, styles, and price levels offered to the full range of usual consumers for such goods. *Id.*

⁶ Because we conclude the goods are legally identical in part based on the broad identification of a “candles,” we need not address Applicant’s arguments related to “aromatherapy fragrance candles.” *See* 6 TTABVUE 15.

Under the third *DuPont* factor, because some of the goods in the cited registration and the goods in the application are identical and unrestricted, we must also presume that the trade channels and classes of consumers for those overlapping goods also are identical. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012)).

Applicant relies on perceived actual differences between his candles for home decor and modern living and the registrant’s “aromatherapy fragrance candles,” which it argues based on extrinsic evidence are used in connection with “Reiki” practices.⁷ However, a registration certificate operates as “prima facie evidence of the validity of the registered mark and . . . of the [registrant’s] exclusive right to use the registered mark in commerce on or in connection with the goods . . . specified in the [registration] certificate, subject to any conditions or limitations stated in the certificate.” Trademark Act §§ 7(b), 33(a), 15 U.S.C. §§ 1057(b), 1115(a). We evaluate the uses encompassed by a registration’s identification of goods (here including the broad “candles,” not just the narrower “aromatherapy fragrance candles”) and cannot consider an applicant’s attempt to show that a registrant’s actual usage is narrower than the statement of goods in the registration. *See Stone Lion Cap. Partners v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 214) (citing *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 943 (Fed. Cir. 1990)).

We find that the second and third *DuPont* factors weigh in favor of likely confusion.

⁷ *See* 6 TTABVUE 15.

B. Strength of Opposer's Mark

Because it may affect the scope of protection to which the cited mark MOONSTONE CHANDLERY is entitled, we turn next to the sixth *DuPont* factor, which considers “[t]he number and nature of similar marks in use on similar goods [or services].” *Charger Ventures*, 476 F.2d at 1361. This *DuPont* factor allows an applicant in an ex parte appeal to contract the scope of protection of a cited mark by adducing evidence of conceptual weakness. *Id.*⁸

“[T]he strength of a mark is not a binary factor” and instead “varies along a spectrum from very strong to very weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (internal citations omitted). “The weaker [the cited] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Id.* at 1338.

In determining the strength of a cited mark in the course of an ex parte appeal, we consider its inherent or conceptual strength based on the nature of the mark itself. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (“A mark’s

⁸ The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin, i.e., its fame or commercial strength. *DuPont*, 476 F.2d at 1361. In an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, Ser. No. 86140341, 2016 TTAB LEXIS 470, *26 (TTAB 2016). *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1207.01(d)(ix) (Nov. 2024). The fifth *DuPont* factor, as is normally the case in ex parte proceedings, is treated as neutral. *See In re Thomas*, Ser. No. 78334625, 2006 TTAB LEXIS 135, *18 n.11 (TTAB 2006). In addition, to the extent that Applicant argues his mark MOONSTONE RITUALS as a whole is “suggestive of the goods” and thus “high in commercial strength,” 6 TTABVUE 18, it misunderstands and misapplies the fifth and sixth *DuPont* factors, which apply to the cited mark.

strength is measured both by its conceptual strength . . . and its marketplace strength . . .”). Conceptual or inherent strength is a measure of a mark’s distinctiveness. *Chippendales*, 622 F.3d at 1353-54. Distinctiveness is “often classified in categories of generally increasing distinctiveness[:] . . . (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992). “Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (quoting *Juice Generation*, 794 F.3d at 1339); see also *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373 (Fed. Cir. 2015).

The cited registration issued on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). We must presume, therefore, that the cited mark as a whole is inherently distinctive for the registrant’s services even though the registration includes a disclaimer of the term CHANDLERY as descriptive or generic for candles.⁹ See *Sock It To Me, Inc. v. Fan, Opp. No. 91230554*, 2020 TTAB LEXIS 201, *30 (TTAB 2020) (SOCK IT TO ME for socks “taken as a whole, is inherently distinctive, although its strength is somewhat limited by its first word, SOCK, which is generic for socks.”); *Tea v. Republic of Tea*,

⁹ CHANDLERY is defined as, inter alia, a place where candles are kept, and “chandler” is a maker or seller of candles. Dec. 8, 2023 Final Office Action at TSDR 9, 14.

Opp. No. 91118587, 2006 TTAB LEXIS 330, *62 (TTAB 2006) (“A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.”). Nonetheless, we may consider whether an inherently distinctive mark, or portion thereof, is “weak as a source indicator” in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *23 (TTAB 2016).

CHANDLERY in the cited mark is disclaimed as descriptive, and there is evidence in the record confirming that a “chandlery” is a place where candles are sold.¹⁰ A MOONSTONE is “a transparent or translucent feldspar of pearly or opaline luster used as a gem.”¹¹ Applicant also argues a moonstone is “a powerful gemstone of divine feminine energy that brings balance and harmony to those who embrace it.”¹² There is no evidence of record indicating that candles are made of moonstone. At most, the iridescent or luminous properties of moonstone are somewhat suggestive of the glow of candle light.¹³ The term MOONSTONE, therefore, is either an arbitrary or slightly suggestive term for candles.

¹⁰ Dec. 8, 2023 Final Office Action at TSDR 11, 17.

¹¹ June 7, 2024 Request for Reconsideration at TSDR 153.

¹² 6 TTABVUE 19; *see also* June 7, 2024 Request for Reconsideration at TSDR 175.

¹³ *See* June 7, 2024 Request for Reconsideration at TSDR 43 (Declaration of Amanda Olsen ¶ 11 (“I do not believe ‘Moonstone’ has a specific tie to candles. It is a semiprecious stone known for its iridescent qualities, rather than any material used in candles.”))).

Third-party registrations also may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [mark] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 794 F.3d at 1339; *see also Spireon*, 71 F.4th at 1363; *Jack Wolfskin*, 797 F.3d at 1373-74; *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 (CCPA 1976) (even if “there is no evidence of actual use” of “third party registrations,” such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used”). “[S]ufficient evidence of third-party use of similar marks can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.” *Juice Generation*, 794 F.3d at 1338 (quotations omitted).

Applicant relies on evidence of third-party registrations on the Principal Register to show that the shared term MOONSTONE in the marks is weak and entitled to limited protection.¹⁴ We note that none of these registrations are for MOONSTONE-formative marks for candles. The registrations fall into two categories. The first set consists of registrations for marks containing the term MOON for (among other goods and services not at issue here) candles or wax for various types of candles (such as soy or beeswax) in class 4:¹⁵

¹⁴ 6 TTABVue 19-24.

¹⁵ *See* June 7, 2024 Request for Reconsideration at TSDR 205-261. The submitted registration certificates do not show current status and title. Nonetheless, many of them issued within the last six years when maintenance documents would be due. We have not, however, listed or considered registrations which, on their face, are not based on use in commerce: Reg. Nos. 6010430 (MOON CARNIVAL), 5374566 (THE MOON AND I), and 7198698 (ZODIAQUE MOON). These registrations lack probative value to show that the cited mark is weak. *Made*

MARK	REGISTRANT	REG. NO./ DATE	SUMMARIZED GOODS/ SERVICES
AURIC MOON	Labaqui, Janine	6506755 Oct. 5, 2021	Candles
BIG MOON	Rogue Ryder Inc.	5675786 Feb. 12, 2019	Candles; Beeswax for use in the manufacture of candles
BIG MOON BEESWAX and design ("beeswax" and "pure handcrafted candles" disclaimed)	Rogue Ryder Inc.	6014132 Mar.17, 2020	Beeswax for use in candles
CALMING MOON	Calming Moon LLC	7113541 July 18, 2023	Candles; wax melts
CRYSTAL CANDLE MOON MILK ("crystal candle" disclaimed)	Beaudoin, Heather	6225737 Dec. 22, 2020	Candles
FULL MOON	New Moon Beginnings, LLC	7075344 June 6, 2023	Candles
HOT MOON & design	Benevento, Anastacia V.	5680061 Feb. 19, 2019	Candles comprised primarily of soy
MISSISSIPPI MOON CANDLE CO. ("Mississippi" and "candle co." disclaimed)	Smith, Christa	5540094 Aug. 14, 2018	Candles

in Nature, LLC v. Pharmavite LLC, Opp. No. 91223352, 2022 TTAB LEXIS 228, *30 (TTAB 2022) (citation omitted).

MARK	REGISTRANT	REG. NO./ DATE	SUMMARIZED GOODS/ SERVICES
MOON AND CANDLE METAPHYSICAL SHOP ("candle metaphysical shop" disclaimed)	Moon and Candle LLC	6194146 Nov. 10, 2020	Candles; Online retail store services featuring candles
MOONLIT WALK	S.C. Johnson & Son, Inc.	3110540 June 27, 2006	Candles
MOONPIE	Chattanooga Bakery, Inc.	4749724 June 2, 2015	Candles
MOONRIDGE CANDLE CO. ("candle co." disclaimed)	McKenzie, Jennifer N.	6900170 Nov. 15, 2022	Candles
MOONSHOT STUDIO	Glow Creations, LLC	7075937 June 6, 2023	Candles; retail services for candles
MOONSTAR CANDLES ("candles" disclaimed)	The Painted Turtle, LLC	5647734 Jan. 8, 2019	Candles comprised primarily of soy
MOONSTAR CANDLES NATURAL SOY: CLEAN BURNING & SUSTAINABLE & design ("candles natural soy: clean burning & sustainable" disclaimed)	The Painted Turtle, LLC	5647436 Jan. 8, 2019	Candles
NELLAMOON (Translation: "modify the moon")	Ricci, Arielle	5559847 Sept. 11, 2018	Candles

MARK	REGISTRANT	REG. NO./ DATE	SUMMARIZED GOODS/ SERVICES
NEW MOON	New Moon Beginnings, LLC	7238204 Dec. 5, 2023	Candles
NOVA MOON	Nova Moon LLC	6461675 Aug. 24, 2021	Candles
PINK MOON	L Chen Inc.	6546019 Nov. 2, 2021	Candles
SUMMERMOON CANDLE COMPANY ("candle company" disclaimed)	Conzachi, Jessica J.	6480667 Sep. 7, 2021	Candles
THE WAXING MOON	Ziemann, Michelle J. and Ziemann, Thomas E.	6245850 Jan. 12, 2021	Candles
VALLEY OF THE MOON AROMATHERAPY ("aromatherapy" disclaimed)	Aroma Thyme Ltd.	3872513 Nov. 9, 2010	Candles
WATERY MOON	Desirepath Mississippi, LLC	6840257 Sept. 6, 2022	Candles
WILLOW MOON CANDLES ("candles" disclaimed)	Willow Moon Cottage LLC	6620833 Jan. 18, 2022	Candles; online retail services featuring candles

We find that these registrations, albeit for different marks, demonstrate some conceptual weakness of the term MOON for candles; this term (like MOONSTONE) is somewhat suggestive both of the glow of candle light as well as nighttime, when candles often are used. But MOON alone is not a component term of the cited mark.

The second set of third-party registrations is for MOONSTONE formative marks:¹⁶

MARK	REGISTRANT	REG. NO./ DATE	SUMMARIZED GOODS/ SERVICES
MOONSTONE	Early Morning LLC	6987627 Feb. 21, 2023	Living trees
MOONSTONE	Moonstone Skin and Body Care, LLC	6721799 May 24, 2022	Retail store services featuring various skin care preparations; Organizing virtual spa sessions; Salon and spa services
MOONSTONE	Wilbert Funeral Services, Inc.	2608266 Aug. 13, 2002	Funerary urns
MELLO MOONSTONE	Merrigo Life LLC dba Green Philosophy Co.	7094879 June 27, 2023	Throw Pillows
MOONSTONE	Early Morning, LLC	5848087 Sept. 3, 2019	Live plants
MOONSTONE	Westerlay Orchids, LP	6460357 Aug. 24, 2021	Various flowers, living plants
WILD MOONSTONE ("moonstone" disclaimed)	Assagai. Denise	5406408 Feb. 20, 2018	Jewelry
MS MOONSTONE	LIU Haihua	5456858 May 1, 2018	Various kitchenware products
MOTHER MOONSTONE	Mother Moonstone LLC	6620840 Jan. 18, 2022	In-person energy healing services

¹⁶ See June 7, 2024 Request for Reconsideration at TSDR 184-204.

MARK	REGISTRANT	REG. NO./ DATE	SUMMARIZED GOODS/ SERVICES
MOONSTONE MAGIC ("moonstone" disclaimed)	Klemme, Walter	5458118 May 1, 2028	Jewelry
CRYSTALLINE MOONSTONE	New RSC, LLC	6143516 Sept. 1, 2020	Perfumes and colognes
PIERRE DE LUNE Translation: "moonstone")	Ga Modefine S.A.	3175028 Nov. 21, 2006	Perfumes; gels; salts; body deodorants
MOON STONE	Guangzhou Gumgjian Life Technology Co., LTD.	6322202 Apr. 13, 2021	Various faucets, lights, air cleaners, etc.

This second set of registrations is of no probative value in determining the strength of the cited mark, as none covers goods or services similar to "candles." *See Omaha Steaks*, 908 F.3d at 1325 (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus "on goods shown to be similar"); *In re i.am.symbolic, llc*, 866 F.3d 1315, 1328 (Fed. Cir. 2017) (disregarding third-party registrations for other types of goods where the applicant had neither proven nor explained that they were related to the goods in the cited registration); *Tao Licensing, LLC v. Bender Consulting Ltd.*, Can. No. 92057132, 2017 TTAB LEXIS 437, *51 (TTAB 2017) (third party registrations in unrelated fields "have no bearing on the strength of the term in the context relevant to this case.").

In sum, we find Applicant's third-party use evidence insufficient to demonstrate conceptual weakness of the MOONSTONE portion of the cited mark for the

registrant's goods, "candles." See *Sabhnani v. Mirage Brands*, Can. No. 92068086, 2021 TTAB LEXIS 464, *32-33 (TTAB 2021) (quoting *In re Inn at St. John's, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, *12 (TTAB 2018)) ("Respondent's evidence . . . 'is a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant in both' *Jack Wolfskin* and *Juice Generation*."), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019). See, e.g., *Jack Wolfskin*, 797 F.3d at 1374 ("the evidence demonstrated the ubiquitous use" of paw print marks that showed the weakness of that design element in the opposer's mark).

We find that the MOONSTONE portion of the cited mark is inherently distinctive, and the mark as a whole has not been shown to be conceptually weak. We therefore treat the sixth *DuPont* factor as neutral in our likelihood of confusion analysis, and accord the cited mark "the normal scope of protection to which inherently distinctive marks are entitled." *In re Info. Builders Inc.*, Ser. No. 87753964, 2020 TTAB LEXIS 20, *26 (TTAB 2020).

C. Similarity or Dissimilarity of the Marks

Turning to the first *DuPont* factor, we compare Applicant's mark and the cited mark "in their entirety as to appearance, sound, connotation and commercial impression." *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). We do not assess whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are similar enough that confusion as to the source of the services offered under the respective marks is likely

to result. *Coach Servs.*, 668 F.3d at 1368; *see also Edom Labs. Inc. v. Lichter*, Opp. No. 91193427, 2012 TTAB LEXIS 81, *15 (TTAB 2012). Where, as here, the goods are in part legally identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs.*, 668 F.3d at 1368.

Applicant's mark is MOONSTONE RITUALS in standard characters. The registrant's cited mark is MOONSTONE CHANDLERY in standard characters, with "chandlery" disclaimed. We agree with the Examining Attorney's assessment that the initial term MOONSTONE is dominant in both marks, and, when the marks are considered in their entireties, are very similar in sound and appearance based on the shared initial term MOONSTONE and differing only with respect to the latter terms. "It is not improper for the Board to determine that, for rational reasons, it should give more or less weight to a particular feature of the mark provided that its ultimate conclusion regarding the likelihood of confusion rests on a consideration of the marks in their entireties." *QuikTrip West, Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1035 (Fed. Cir. 2021) (internal citations omitted, cleaned up).

Descriptive matter, such as the disclaimed term CHANDLERY, typically is less significant or less dominant when comparing marks. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.") (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060 (Fed. Cir. 1985). Moreover, as the first word in each mark,

purchasers are more inclined to focus on MOONSTONE. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, Opp. No. 91074797, 1988 TTAB LEXIS 60, *8 (TTAB 1988) (“it is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered.”).

We disagree with Applicant’s contention that the combination of MOONSTONE with the respective terms CHANDLERY and RITUALS creates two very different commercial impressions, particularly in the manner described by Applicant in his brief.¹⁷ That is, although RITUALS may conjure a “daily task that bring[s] balance and harmony together”¹⁸ or “a ceremonial or religious act,”¹⁹ the terms MOONSTONE RITUALS together do not add meaning, as used for “candles for home decor and modern living,” sufficient to distinguish it from the cited mark.

But even if we accept Applicant’s premise as to connotation, we conclude that the respective marks are very similar in sight and sound. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s*, 2018 TTAB LEXIS 170, at *13 (quoting *In re Davia*, Ser. No. 85497617, 2014 TTAB LEXIS 214, *4 (TTAB 2014)).

Viewing the marks in their entirety, we find that the marks present similar appearances, sounds, meanings, and commercial impressions, and therefore the first *DuPont* factor favors a finding of likelihood of confusion.

¹⁷ See 6 TTABVUE 9-14.

¹⁸ *Id.* at 9.

¹⁹ Dec. 8, 2023 Final Office Action at TSDR 21-22.

D. Purchasing Conditions and Degree of Consumer Care

Under the fourth *DuPont* factor, “we consider the conditions under which the goods and services are likely to be purchased, e.g., whether on impulse or after careful consideration, as well as the degree, if any, of the sophistication of the consumers.” “Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchasers of inexpensive items may tend to have the opposite effect.” *Palm Bay*, 396 F.3d 1369, 1376 (citation omitted).

Applicant submitted three sworn “customer” declarations who either buy Applicant’s candles or sell Applicant’s candles at their stores.²⁰ Applicant argues that these individuals testified that their candle purchases are not “impulse buys” and “indicate a level of sophistication in candle purchasing.”²¹ This evidence, whatever its probative value, is contradicted by the declaration from Applicant, where he testifies: “Nearly everyone loves candles, and I can cast a wide net to market my products to an expansive demographic of customers.”²² Applicant’s evidence further indicates:

²⁰ Declarations of Amanda Olsen, Lindsay Nyman, and Nikki Pyatt (June 7, 2024 Request for Reconsideration at TSDR 42-52).

²¹ 6 TTABVUE 16-17 (citing declarations of Amanda Olsen (store owner), Lindsay Nyman (consumer), and Nikki Pyatt (store manager)) (June 7, 2024 Request for Reconsideration at TSDR 42-52). The Examining Attorney criticizes these declarations as “shar[ing] some commonality in wording, layout and organization, and thus appear to have been drafted for the customers. It is also unclear what, if any, affiliation exists between the applicant and these several consumers. This creates ambiguity concerning these statements and limits their persuasiveness.” 4 TTABVUE 9. While there are some similarities between the statements, they are not identical, and we give them the probative value they deserve. We do not give any weight to the declarants’ statements that they would not, hypothetically, be confused by the two marks at issue as the ultimate question of likelihood of confusion remains with the Board.

²² June 7, 2024 Request for Reconsideration at TSDR 39 (Clement Decl. ¶ 11).

“The retail price of a candle generally ranges from approximately \$1.99 for a votive to \$35 for a large pillar or jar candle” (though “[i]mpactfully scented candles in exceptionally beautiful containers and elaborate boxes can be \$200 or more.”).²³ This is confirmed by the evidence made of record by the Examining Attorney, showing many candles priced under \$20.²⁴

We conclude that many candles may be low-priced and therefore may be impulse buys, and may be purchased by both sophisticated purchasers and unsophisticated, ordinary consumers. Because we must base our findings on the least sophisticated potential purchaser, *Stone Lion*, 746 F.3d at 1325 (citation and subsequent history omitted), we find the fourth *DuPont* factor to be neutral.

E. Summary of the *DuPont* Factors

We have carefully considered and weighed all of the evidence made of record, and the arguments related thereto. *Charger Ventures*, 64 F.4th at 1384 (“[I]t is important . . . that the Board . . . weigh the *DuPont* factors used in its analysis *and* explain the results of that weighing.”) (emphasis in original).

Because we have found that the goods are legally identical in part and are offered in overlapping channels of trade to the same classes of consumers; Applicant’s mark MOONSTONE RITUALS and the cited mark MOONSTONE CHANDLERY are very similar, particularly in light of the legally identical goods and channels of trade; the strength of the cited mark; and sophistication of consumers and degree of care are

²³ *Id.* at TSDR 83.

²⁴ *E.g.*, 4 TTABVUE 12, 17, 22, 25, 27, 31, 33-34, 35, 37, 40, 41, 44, and 48.

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neutral; and we treat as neutral any *DuPont* factors for which there is no argument or evidence of record, we conclude that confusion between Applicant's mark and the cited mark in Reg. No. 5843729 is likely.

Decision

The refusal to register Application Ser. No. 97626706 is affirmed.