

This Opinion is Not a  
Precedent of the TTAB

Mailed: May 30, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Bison Designs, LLC*

Serial No. 97786484

Margaret Polson and David Orms of Polson Intellectual Property Law PC,  
for Bison Designs, LLC

Ashimadi Ladzekpo, Trademark Examining Attorney, Law Office 131,  
Nicholas Coleman, Managing Attorney.

Before Greenbaum, Thurmon and Bradley,  
Administrative Trademark Judges.

Opinion by Bradley, Administrative Trademark Judge:

Bison Designs, LLC (“Applicant”) applied to register the standard-character mark  
LAST CHANCE on the Principal Register for “Belts for clothing” in International  
Class 25 and “Belt buckles; Clothing buckles” in International Class 26.<sup>1</sup>

The Examining Attorney refused registration under Section 2(d) of the Trademark  
Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark is likely to cause

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<sup>1</sup> Application Serial No. 97786484 was filed on February 8, 2023, under Section 1(a) of the  
Trademark Act, 15 U.S.C. § 1051(a), claiming first use anywhere and first use in commerce  
on January 30, 2003 for both classes.

confusion with the typed mark LAST CHANCE registered on the Principal Register for, in relevant part, “retail discount stores featuring footwear; apparel; apparel accessories” in International Class 35.<sup>2</sup>

After the Examining Attorney issued the final refusal, Applicant appealed to the Board.<sup>3</sup> Applicant and the Examining Attorney then filed briefs.<sup>4</sup> We affirm the refusal to register.

## **I. Likelihood of Confusion**

Our determination under Section 2(d) of the Trademark Act involves an analysis of all of the probative evidence of record that is relevant to the factors bearing on a likelihood of confusion. *See In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361

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<sup>2</sup> Registration No. 2734806, registered on July 8, 2003 and has been maintained. Prior to November 2, 2003, “standard character” drawings were known as “typed” or “typeset” drawings. *See In re Vittera Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012) (“until 2003, ‘standard character’ marks formerly were known as ‘typed’ marks”). “A typed drawing is the legal equivalent of a standard character drawing.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 807.03(i) (2024).

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, citations in this opinion are in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals 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 to the Lexis legal database. Practitioners should adhere to the practice set forth in TBMP §§ 101.03 et seq.

<sup>3</sup> 1 TTABVUE.

Citations in this opinion to the briefs and other materials in the appeal docket refer to TTABVUE, the Board’s online docketing system. Page references to the application file refer to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. All citations to documents contained in the TSDR database are to the downloaded .pdf versions of the documents.

<sup>4</sup> 8 TTABVUE (Applicant’s brief); 10 TTABVUE (Examining Attorney’s brief).

(CCPA 1973) (“*DuPont*”); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005).

We must consider “each *DuPont* factor for which there is evidence and argument.” *Spireon, Inc. v. Flex LTD*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *In re Guild Mortg. Co.*, 912 F.3d 1376, 1380 (Fed. Cir. 2019)). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (“likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (alteration in the original) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). These and other factors are discussed below.

#### **A. Similarity of the Marks**

We evaluate “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *In re Detroit Ath. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (citing *DuPont*, 476 F.2d at 1361). Applicant acknowledges that its standard character mark LAST CHANCE and Registrant’s typed mark LAST CHANCE “are identical in appearance, sound, and meaning.”<sup>5</sup> However, Applicant asserts that the marks convey different commercial impressions when considered in “the context of the specific goods and services at issue”: “Applicant’s Mark, as used with belts and buckles, conveys an impression of fashion

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<sup>5</sup> 8 TTABVue 7. As noted *supra* n.2 standard character marks and typed marks are legally equivalent.

and utility, whereas the Registrant's Mark, used for retail discount services, projects affordability and a broad product range.”<sup>6</sup> Applicant's argument ignores that Registrant's mark covers not retail discount stores in the abstract, but rather, “retail discount stores featuring footwear; apparel; apparel accessories.” Applicant's “belts for clothing” and “belt buckles; clothing buckles” are apparel accessories.<sup>7</sup> Applicant does not provide a basis for, or any evidence demonstrating how the identical mark conveys a different commercial impression in the context of belts, belt buckles, and clothing buckles versus retail discount stores featuring belts, belt buckles and clothing buckles. *See i.am.symbolic*, 866 F.3d at 1325 (applicant did not establish that marks consisting of the words I AM, “have many different definitions in different contexts, or that I AM when applied to [applicant's] goods brings to mind something different from I AM when applied to registrants' marks”) (citation omitted).

Accordingly, where, as here, “word marks are identical but neither suggestive nor descriptive of the goods [or services] associated with them, the first *DuPont* factor weighs heavily against the applicant.” *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

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<sup>6</sup> 8 TTABVue 7-8.

<sup>7</sup> We take judicial notice that COLLINS DICTIONARY defines “accessories” as “articles such as belts and scarves which you wear or carry but which are not part of your main clothing.” (<https://www.collinsdictionary.com/us/dictionary/english/accessory>, accessed May 28, 2025). The Board may take judicial notice of dictionary evidence, *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), including from online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, Ser. No. 75788830, 2006 TTAB LEXIS 136, at \*6-9 (TTAB 2006).

**B. Similarity of the Goods and Services**

Under the second factor, we analyze the “similarity or dissimilarity and nature of the goods or services” and “consider the applicant’s goods as set forth in its application, and the [registrant’s services] as set forth in its registration.” *i.am.symbolic*, 866 F.3d at 1325 (alteration in the original) (quoting *M2 Software, Inc. v. M2 Communs., Inc.*, 450 F.3d 1378, 1382 (Fed. Cir. 2006)). “[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) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981)). Further, where, as here, the marks are identical, the degree of similarity between the goods or services required to support a finding of likelihood of confusion declines. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207 (Fed. Cir. 1993) (“even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source”); *DeVivo v. Ortiz*, Opp. No. 91242863, 2020 TTAB LEXIS 15, at \*36 (TTAB 2020) (“because the marks are identical, the degree of similarity between the goods or services required for confusion to be likely declines”).

Applicant’s identification of goods covers “belts for clothing” and “belt buckles; clothing buckles.” Registrant’s services include “retail discount stores featuring footwear; apparel; apparel accessories.” It is “well established that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other.” *Detroit Ath.*, 903 F.3d at 1307

(citations omitted). Accordingly, “we have held that confusion is likely where one party engages in retail services that sell goods of the type produced by the other party.” *Id.* (registrant’s clothing items including athletic uniforms and gym suits encompassed clothing sold through applicant’s retail apparel stores and retail shops featuring sports team related clothing and apparel). *See also In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464 (Fed. Cir. 1988) (“applicant’s ‘general merchandise store services’ would include the sale of furniture [covered by the cited registration] . . . What else it sells is irrelevant; there is overlap.”). As discussed above Applicant’s belts and belt buckles are apparel accessories, as defined in the dictionary, and further supported by evidence submitted by the Examining Attorney.<sup>8</sup> As such, Registrant’s “retail discount stores featuring . . . apparel accessories” would include the sale of Applicant’s belts and belt buckles. Additionally, the Examining Attorney provided evidence demonstrating that retail discount stores such as outlet stores,<sup>9</sup> sell belts and buckles.<sup>10</sup>

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<sup>8</sup> November 13, 2023 Office Action at 28-34 (belt buckles listed under the category “fashion & accessories”), 35-40 (belts listed under the category “fashion & accessories”); June 4, 2024 Final Office Action at 93 (“belt buckles” listed under the “accessories” category).

<sup>9</sup> We take judicial notice that a “discount store” is “in merchandising, a retail store that sells products at prices lower than those asked by traditional retail outlets.” *ENCYCLOPEDIA BRITANNICA* (2025) (<https://academic.eb.com/levels/collegiate/article/discount-store/30620>, accessed May 27, 2025). The Board may take judicial notice of encyclopedia entries. *In re White Jasmine LLC*, 2013 TTAB LEXIS 9, at \*20 n.24 (TTAB 2013) (taking judicial notice of entry for “tea” from *ENCYCLOPEDIA BRITANNICA*). Outlet stores are one type of retail stores that offer discounted merchandise. *See* November 13, 2023 Office Action at 8-10, 12-16, 18-20, 22-24, 36 (Coach outlet website and retail stores listing “discount” as a product category and featuring discounted merchandise); June 4, 2024 Final Office Action at 57, 59-60 (Tommy Hilfiger at Tanger Outlets website and retail store listing discounted prices).

<sup>10</sup> November 13, 2023 Office Action at 12-15 (belt and buckle discounts, e.g., a “signature buckle belt” for “\$44.80 (65% off)”), 13-14 (belt and buckle deals, e.g., “buy a belt get a buckle for \$29”).

Applicant asserts that its goods “differ fundamentally” from Registrant’s services because “Applicant offers tangible, branded fashion accessories to consumers, whereas the Registrant delivers services geared toward selling a wide array of goods, without focusing on the manufacture or branding of particular items.”<sup>11</sup> Yet, Applicant’s argument is refuted by the parties’ identifications of goods and services. Applicant’s goods are not limited to “branded fashion accessories,” but include all belts and belt buckles. And Registrant’s retail discount services do specifically focus on certain types of goods including “apparel accessories” which encompass Applicant’s belts and belt buckles.<sup>12</sup> *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (“descriptions in the application and registration” were “important evidence” in determining the relatedness of goods and services).

Accordingly, “while [Applicant’s] goods and [Registrant’s] services are not identical, they substantially overlap, which weighs in favor of finding a likelihood of confusion.” *Detroit Ath.*, 903 F.3d at 1306.

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<sup>11</sup> 8 TTABVUE 9.

<sup>12</sup> Applicant’s reliance on *In re Sears, Roebuck & Co.*, 1987 TTAB LEXIS 84, 2 USPQ2d 1312 (TTAB 1987) is misplaced. *See* 8 TTABVUE 9, 12-13. There, the Board concluded that there was no likelihood of confusion because although the applicant’s brassieres and registrant’s ladies’ sportswear were “undeniably related goods” there was a “competitive distance between them” because they had different uses and were normally sold in different sections of department stores. *Id.* At \*5-6. Additionally, the parties had entered into a consent agreement and provided supporting affidavits attesting to an absence of instances of actual confusion. *Id.* at \*6-7. There are no parallels with the facts here. There is no consent agreement, and no such competitive distance exists where Applicant’s belts and buckles explicitly fall within the “apparel accessories” identified as being featured in Registrant’s retail discount stores. Further, the language Applicant quotes (at 8 TTABVUE 9) does not appear in the decision.

**C. Similarity of Trade Channels and Classes of Purchasers**

We next turn to the *DuPont* factor concerning the similarity or dissimilarity of the trade channels in which, and the classes of purchasers to whom, the parties' respective goods and services are marketed. *DuPont*, 476 F.2d at 1361; *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1322-23 (Fed. Cir. 2014). Just as with the parties' goods and services, we must base our analysis on the identifications in the involved application and cited registration. *Stone Lion*, 746 F.3d at 1323; *Detroit Ath.*, 903 F.3d at 1308 (factor "must be evaluated with an eye toward the channels specified in the application and registration").

Here, the application and cited registration do not contain any restrictions on the channels of trade or classes of customers. Accordingly, the goods and services are presumed to travel in all normal channels of trade to all the normal classes of purchasers for such goods and services. *Detroit Ath.*, 903 F.3d at 1308. Where, as here, the "goods [and services] of both parties are at least overlapping, we must presume that the purchasers and channels of trade would at least overlap." *Major League Baseball Players Ass'n v. Chisena*, Opp. No. 91240180, 2023 TTAB LEXIS 117, at \*64 (TTAB 2023). That is "where one party uses its mark on goods that are sold in retail stores that customarily vend those goods, it is clear that the trade channels and customers overlap." *See In re Country Oven, Inc.*, Ser. No. 87354443, 2019 TTAB LEXIS 381, at \*19 (TTAB 2019). Here, the normal trade channels for Applicant's belts and belt buckles are all types of stores that offer these accessories, both online and brick and mortar, and would include Registrant's "retail discount stores featuring . . . apparel accessories."



Applicant contends that the parties' trade channels differ because its "goods are sold through specialty retailers, online marketplaces, and accessory boutiques catering to both fashion-conscious and outdoor-recreational consumers" while "Registrant's discount stores appeal to a wide range of cost-focused shoppers seeking diverse merchandise at reduced prices."<sup>13</sup> Applicant argues that "consumers are unlikely to conflate the source of these fashion/outdoor goods with a discount store offering myriad brands and product lines."<sup>14</sup> However, Applicant ignores that "the question of registrability of [its] mark must be decided on the basis of the identification of goods set forth in the application" which does not contain any restriction to certain trade channels, or to any particular consumers. *Octocom Sys. v. Hous. Comput. Servs.*, 918 F.2d 937, 942 (Fed. Cir. 1990).

Accordingly, this *DuPont* factor also favors a finding of likelihood of confusion.

#### **D. Purchaser Care**

In analyzing purchaser care we consider the "conditions under which and buyers to whom sales are made, i.e., 'impulse' v. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. Where, as here, the goods and services as identified "include ordinary consumer items . . . we must assume that the class of consumers for such goods [and services] is the public at large, rather than a discriminating or sophisticated market segment." *In re Ginc UK Ltd.*, Ser. No. 78618843, 2007 TTAB LEXIS 83, at \*14 (TTAB 2007) (goods at issue included t-shirts, jackets and

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<sup>13</sup> 8 TTABVUE 10.

<sup>14</sup> 8 TTABVUE 10.

swimsuits). And we must base our decision on “the least sophisticated potential purchasers.” *Stone Lion*, 746 F.3d at 1325.

“When products 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, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000); *see also Major League*, 2023 TTAB LEXIS 117, at \*65 (“t-shirts and many of the other casual, everyday items of wearing apparel identified in applicant’s application are relatively inexpensive and are therefore likely to be purchased by consumers on impulse, and without a great deal of care”). The Examining Attorney introduced evidence showing belts offered at prices including \$24, \$28.80, \$39, and \$49.99,<sup>15</sup> and belt buckles at prices including \$10, \$14, \$19, and \$24.<sup>16</sup> The Examining Attorney also submitted evidence showing outlet (i.e., discount) stores offering belts at \$44.80 and belt buckles at \$39.<sup>17</sup> Additionally, Applicant’s specimen shows that it offers belts for sale at prices ranging from \$17 to \$46.50.<sup>18</sup> And Registrant’s identification of services covers “retail discount stores” indicating that its services encompass selling items at a low price. Accordingly, given the evidence demonstrating that goods and services of the type identified in Applicant’s and Registrant’s identifications are inexpensive, consumers are likely to use a lesser standard of care in making purchasing decisions regarding these ordinary consumer

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<sup>15</sup> June 4, 2024 Final Office Action at 81, 17-22, 76, 81, 10.

<sup>16</sup> June 4, 2024 Final Office Action at 90, 93, 84, 83.

<sup>17</sup> November 13, 2023 Office Action at 12-13, 15.

<sup>18</sup> Applicant’s specimen at 16-18, 34-36.

items, thereby increasing the likelihood of confusion. *See Sock It to Me v. Aiping Fan*, Opp. No. 91230554, 2020 TTAB LEXIS 201, at \*25 (TTAB 2020) (“Because the buyers to whom sales are made are all general consumers, and the goods at issue [i.e., socks] are relatively low-priced and subject to impulse buying, we find that, the fourth *DuPont* factor weighs in favor of finding a likelihood of confusion.”); *Brown Shoe Co. v. Robbins*, Opp. No. 91176273, 2009 TTAB LEXIS 364, at \*6 (TTAB 2009) (“goods include general clothing items that would not be purchased with a great deal of care or require purchaser sophistication, which increases the likelihood of confusion”).

Applicant argues that consumers of belts and buckles “typically exercise a high degree of care in their purchasing decisions” and that its “goods are positioned within a market where quality and style are paramount.”<sup>19</sup> Applicant asserts that “[r]ather than hastily selecting items, [consumers] consider brand identity, product craftsmanship, and personal style, making it even less likely that they will confuse one source of belts or buckles with another.”<sup>20</sup> We are not persuaded by Applicant’s arguments. Applicant’s assertions are unsupported by sworn statements or other evidence, and “[a]ttorney argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018). Further, even if some of Applicant’s consumers may be more discerning in purchasing belts and buckles, “Board precedent requires the decision to be based on the least sophisticated potential purchasers.” *Stone Lion*, 746 F.3d at 1325.

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<sup>19</sup> 8 TTABVUE 11.

<sup>20</sup> 8 TTABVUE 11.

We thus find the *DuPont* factor regarding purchaser care weighs in favor of likelihood of confusion.

**E. Absence of Actual Confusion**

Under the seventh and eighth *DuPont* factors, we consider the nature and extent of any actual confusion in light of the length of time and conditions under which there has been contemporaneous use of Applicant's and Registrant's marks. *DuPont*, 476 F.2d at 1361. Unlike some other factors, for the eighth factor we must "look at **actual market conditions**, to the extent there is evidence of such conditions of record." *In re Guild Mortg. Co.*, Ser. No. 86709944, 2020 TTAB LEXIS 17, at \*19 (TTAB 2020) (emphasis in the original). This factor is generally "not that important in ex parte cases unless the applicant provides us with contextual evidence that allows us to meaningfully assess the length of time and degree to which the applicant's and registrant's commercial activities would have provided an opportunity for confusion to have manifested itself." *In re Embiid*, Ser. No. 88202890, 2021 TTAB LEXIS 168, at \*53-54 (TTAB 2021).

Applicant argues that its mark LAST CHANCE "has been in continuous use since at least 2003, overlapping with the Registrant's Mark for more than two decades."<sup>21</sup> However, the only information in the record regarding Applicant's use is the specimen submitted with its application, and there is no information in the record regarding Registrant's use. Applicant appears to be relying mainly on the January 30, 2003 date of first use listed in its application and the July 8, 2023 registration date for the cited

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<sup>21</sup> 8 TTABVUE 11.

registration. Applicant's specimen of use contains some excerpts from a product catalog that states "catalog valid July 2018-2019"<sup>22</sup> and a few limited screenshots from what appears to be its website at bison designs.com dated February 8, 2023,<sup>23</sup> but neither provide the requisite context.

We cannot assess whether there has been a significant opportunity for confusion to occur without any context about the actual market conditions for Applicant's goods and Registrant's services such as the geographic scope of where the goods and services are available, the extent of sales, or any information about marketing activities. *See Guild Mortg.*, 2020 TTAB LEXIS 17, at \*25 ("there is a lack of evidence that **in the actual marketplace**, the **same** consumers have been exposed to **both** marks for the respective services, such that we could make a finding as to the [eighth *DuPont* factor]") (emphasis in the original); *Ginc UK*, 2007 TTAB LEXIS 83, at \*26 ("Without evidence of the nature and geographic extent of both applicant's and registrant's use of their respective marks, we cannot determine whether a meaningful opportunity for actual confusion has ever existed.").

Applicant also asserts that there have not been any "any documented instances of consumer confusion."<sup>24</sup> However, such "uncorroborated statements of no known instances of actual confusion are of little evidentiary value." *Majestic Distilling*, 315 F.3d at 1317; *In re Opus One, Inc.*, Ser. No. 75722593, 2001 TTAB LEXIS 707, at \*19 (TTAB 2001) ("fact that an applicant in an ex parte case is unaware of any instances

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<sup>22</sup> Applicant's specimen at 15, 33.

<sup>23</sup> Applicant's specimen at 16-18, 34-36.

<sup>24</sup> 8 TTABVUE 11-12.

of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis”). Additionally, in the *ex parte* context, “there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion.” *Guild Mortg.*, 2020 TTAB LEXIS 17, at \*23. Finally, “[t]he lack of evidence of actual confusion carries little weight, especially in an *ex parte* context.” *Majestic Distilling*, 315 F.3d at 1317 (citation omitted).

Accordingly, we find that the seventh and eighth *DuPont* factors are neutral.

## **II. Conclusion**

After reviewing the evidence of record, and the arguments relating thereto, we conclude that confusion is likely. Applicant’s and Registrant’s marks are identical, which weighs heavily in favor of likelihood of confusion. *See Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024) (“first *DuPont* factor should weigh heavily in the confusion analysis”). Additionally, the goods and services, trade channels and purchasers substantially overlap and the low degree of purchaser care all weigh in favor of a likelihood of confusion. The factors regarding actual confusion and co-existence are neutral and do not alter our conclusion that confusion is likely. Moreover, no factor weighs against a finding of likelihood of confusion.

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