

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: July 17, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GI Scientific, LLC

Serial No. 97790646

Samantha Gerold and Mark Farber of Farber LLC,
for GI Scientific, LLC.

Jaime Batt, Trademark Examining Attorney, Law Office 125,
Robin Mittler, Managing Attorney.

Before English, Lavache, and O'Connor
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

GI Scientific, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark **VENTURI** for goods ultimately identified as “Cleaning devices and accessories for use on components of drinking containers, namely, cleaning brushes, pull-through cleaning members and push-through cleaning members for cleaning internal surfaces of drinking straws, all of the foregoing excluding mugs,” in International Class 21.¹

¹ Application Serial No. 97790646, filed February 10, 2023, based on a bona fide intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion, citing the composite mark below, which is registered on the Principal Register for "housewares namely, mugs," in International Class 21.²



After the Examining Attorney issued a final refusal under Trademark Act Section 2(d), Applicant appealed and requested reconsideration, which the Examining Attorney denied. The appeal then resumed, and both Applicant and the Examining Attorney filed briefs.

For the reasons explained below, we **affirm** the refusal to register under Trademark Act Section 2(d).

I. Evidentiary Objection

Before turning to our analysis, we address the Examining Attorney's objection to evidence that Applicant references and discusses in its brief, namely, internet

² Registration No. 2010413, issued on October, 22, 1996; twice renewed. The registration does not include a description of the mark, but does include the following consent statement: "The name appearing in the mark identifies a living individual whose consent is of record."

Since issuance of the registration, some of the goods originally listed in the registration have been deleted. In the registration record, the deletions are indicated by enclosing the deleted goods in brackets. See TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1402.12 (May 2025). The identification set forth in the text above does not include this bracketed wording.

materials for which only the corresponding hyperlinks or web addresses are provided. The Examining Attorney previously objected to, and did not consider, similar internet evidence when it was included in Applicant's request for reconsideration, advising Applicant that it was improperly submitted.³ The Examining Attorney reiterates the objection here and asks us to disregard the hyperlinks and web addresses in Applicant's brief.⁴

The record in an appeal should be complete prior to the filing of the appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *In re HSB Solomon Assocs., LLC*, Ser. No. 77136242, 2012 TTAB LEXIS 79, at *9 (TTAB 2012); TBMP § 1207.01. Further, merely providing hyperlinks or webpage addresses to internet materials alone is insufficient to make the corresponding webpages of record. *See, e.g., In re Olin Corp.*, Ser. No. 86651083, 2017 TTAB LEXIS 337, at *15 n.15 (TTAB 2017) ("Applicant did cite to an internet link, here and at several other places in its brief. This is improper. Because the information displayed at a link's internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record."); *HSB Solomon*, 2012 TTAB LEXIS 79, at *9 ("[A] reference to a

³ See January 7, 2025 Denial of Request for Reconsideration at TSDR 7.

The TTABVUE and Trademark Status and Document Retrieval (TSDR) citations in this opinion refer to the docket and electronic file database for the involved application. In addition, the case citations in this opinion are in the form recommended in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2025). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For opinions of the Board, this opinion cites to the Lexis legal database and cites only precedential decisions. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

⁴ Examining Attorney's Brief, 8 TTABVUE 3.

website's internet address is not sufficient to make the content of that website or any pages from that website of record.”). To properly introduce internet evidence into the record, a party must provide (1) an image file or printout of the downloaded webpage, (2) the date the evidence was downloaded or accessed, and (3) the complete URL address of the webpage. *See In re I-Coat Co., LLC*, Ser. No. 86802467, 2018 TTAB LEXIS 171, at *7-9 (TTAB 2018); TBMP § 1208.03; TMEP § 710.01(b).

Because the internet materials referenced in Applicant's brief are untimely and improperly submitted, we sustain the Examining Attorney's objection to their introduction and have not considered them.

II. Likelihood of Confusion

Trademark Act Section 2(d), in relevant part, prohibits registration of a mark that “so resembles a mark registered in the Patent and Trademark Office . . . as to be likely, when used on or in connection with the goods of the applicant, to cause confusion.” 15 U.S.C. § 1052(d). To determine whether confusion is likely, we analyze all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). *See In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and the relatedness of the respective goods, because 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, we have considered each *DuPont* factor that is relevant and for which there is evidence

and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1205 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). Ultimately, however, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

A. Relatedness of the Goods

We begin our analysis with the second *DuPont* factor, which concerns the similarity or dissimilarity and nature of the respective goods. *DuPont*, 476 F.2d at 1361. In determining the relatedness of the goods, we must consider the goods as they are identified in Applicant’s application and the cited registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)).

Registration may be refused as to a particular class of goods if Applicant’s mark as used in connection with any of its identified goods in that class is likely to cause confusion with Registrant’s mark for any of the goods listed in the cited registration. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981) (indicating that likelihood of confusion must be found if there is likely to be confusion

with respect to any item that comes within the identification of goods or services in the application).

When comparing the goods, the question is whether the goods are related in some manner, or that the conditions and activities surrounding their marketing are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012).

Turning to the goods at issue here, Applicant's goods are identified as "Cleaning devices and accessories for use on components of drinking containers, namely, cleaning brushes, pull-through cleaning members and push-through cleaning members for cleaning internal surfaces of drinking straws, all of the foregoing excluding mugs," in International Class 21. And Registrant's goods are "housewares namely, mugs,"⁵ in International Class 21.

The Examining Attorney asserts that Applicant's goods and Registrant's goods are closely related because "the evidence of record establishes that the same entity commonly provides the relevant goods and markets the goods under the same mark."⁶

⁵ A "mug" is a "cylindrical drinking cup." MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/mug> (accessed on July 14, 2025). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed form or regular fixed editions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, Opp. No. 91061847, 1982 TTAB LEXIS 146, at *7 (TTAB 1982), *aff'd*, 703 F.2d 1372 (Fed. Cir. 1983); *In re Red Bull GmbH*, Ser. No. 75788830, 2006 TTAB LEXIS 136, at *7 (TTAB 2006); TBMP § 1208.04.

⁶ Examining Attorney's Brief, 8 TTABVUE 8.

Specifically, the Examining Attorney draws our attention to third-party website evidence showing that retailers who offer mugs commonly also offer brushes for cleaning drinking straws.

For instance:

- Camelbak (camelbak.com) offers both a “Custom Camp Mug”⁷ and a “Bottle Brush Kit,” which includes a brush that could be used to clean drinking straws;⁸
- MalloMe (mallome.com) offers an “Insulated Stainless Steel Coffee Mug Travel Cup,” which includes a “straw cleaning brush”;⁹
- Takeya (takeyausa.com) offers both a “17oz Traveler Leakproof Coffee Mug,”¹⁰ and a “2-in-1 Bottle Cleaning Brush” with a small inner brush . . . for cleaning reusable straws”;¹¹
- TAL (talhydration.com) offers a “14oz Boulder Mug,”¹² as well as a “5 piece stainless steel straw set” that includes a “straw cleaning brush”;¹³
- THILY (thily.com) offers a “travel mug” that comes with “2 reusable straws and 1 straw brush;”¹⁴

⁷ November 8, 2023 Nonfinal Office Action at TSDR 56.

⁸ *See id.* at 59.

⁹ June 25, 2024 Final Office Action at TSDR 7-8.

¹⁰ *Id.* at 28.

¹¹ *Id.* at 38.

¹² *Id.* at 47.

¹³ *Id.* at 50.

¹⁴ *Id.* at 53.

- Iron Flask (ironflask.com) offers “Insulated Stainless Steel Tumblers & Coffee Mugs,”¹⁵ some of which are sold with straw brushes;¹⁶
- Swig Life (swiglife.com) offers both mugs and six-piece straw sets that include a cleaning brush;¹⁷ and
- Owala (owalalife.com) offers a stainless steel “SmoothSip” tumbler,¹⁸ as well as a “2-in-1 Bottle Brush” with an integrated “Twist-n-Hide straw brush [that] will conquer any straw.”¹⁹

This evidence is relevant and probative to our analysis because it shows that multiple third parties in the marketplace offer, on the same website and under the same mark, both mugs and straw-cleaning brushes, indicating that consumers are thus accustomed to encountering both types of goods offered by a single source together in the same place and that they may therefore view the goods as related. *See, e.g., Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) (“[T]estimony that third-party companies sell both types of goods is pertinent to the relatedness of the goods.”); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1328-29 (Fed. Cir. 2000) (finding the Board “erred when it refused to consider the lay evidence that several large companies produce and sell both pet and human food in deciding

¹⁵ January 7, 2025 Denial of Request for Reconsideration at TSDR 71.

¹⁶ *Id.* at 67-70.

¹⁷ *Id.* at 98, 103.

¹⁸ June 25, 2024 Final Office Action at TSDR 11. While owalalife.com refers to the product as a “tumbler,” it appears to be the same type of insulated drinking vessel that other websites in evidence refer to as a “mug.”

¹⁹ *Id.* at 21.

whether a consumer would reasonably believe that . . . dog treats originated from the same source as . . . human snacks”).

This evidence further indicates that mugs and brushes for cleaning straws are complementary goods, in that one may be used in connection with the other. *See In re Ox Paperboard*, LLC, Ser. No. 87847482, 2020 TTAB LEXIS 266, at *18 (TTAB 2020) (noting that complementary use of goods is a factor in finding relatedness). That is, the evidence shows that consumers of mugs may use straws with their mugs and thus may also use a brush to clean those straws.

For its part, Applicant argues that the Examining Attorney’s evidence does not establish any relatedness between the respective goods, because Applicant’s “cleaning device serves a specific antimicrobial function that is unlikely to be found in the products offered by other third party [sic] entities who solely provide drinking cups, straws and standard bristle brushes.”²⁰ According to Applicant, “[t]he goods identified in [its] . . . application are specifically designed to clean and disinfect the internal surfaces of drinking straws, including the removal of harmful bacteria.”²¹ Thus, Applicant asserts, its goods are “fundamentally different” from Registrant’s and “there is no commercial or technological relationship” between the parties’ goods.²²

We are not persuaded by Applicant’s arguments. First, there is no question that the respective goods here are not the same. But that does not mean that they are

²⁰ Applicant’s Brief, 6 TTABVUE 9.

²¹ *Id.*

²² *Id.*

unrelated. Indeed, the issue is not whether consumers would confuse Applicant's goods with Registrant's goods, but rather whether there is a likelihood of confusion as to the source of these goods.²³ *L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 TTAB LEXIS 77, at *16 (TTAB 2012); *In re Rexel Inc.*, Ser. No. 73241423, 1984 TTAB LEXIS 57, at *2 (TTAB 1984).

Second, the antimicrobial and disinfecting functions of the goods are not reflected in Applicant's identification of its goods, and, as noted above, in determining the relatedness of the relevant goods, we must consider the goods as they are identified in Applicant's application and the cited registration. *See Stone Lion*, 746 F.3d at 1323. Thus, we presume that the wording "cleaning brushes, pull-through cleaning members and push-through cleaning members for cleaning internal surfaces of drinking straws" in Applicant's identification encompasses all such goods, including both those that feature antimicrobial or disinfecting properties, and those that do not. *See Conopco, Inc. v. Transom Symphony OpCo, LLC*, Opp. No. 91256368, 2022 TTAB LEXIS 123, at *16 (TTAB 2022) ("It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of goods in a particular class in the application.").

In sum, we find that the respective goods here are complementary and that consumers are accustomed to them being offered by the same source under the same mark. Indeed, in several of the examples detailed above the mugs and drinking straw

²³ Likewise, the wording "all of the foregoing excluding mugs" in Applicant's identification of goods does not preclude a finding of relatedness between the goods in view of the evidence of record.

brushes are sold together as a set. Thus, the respective goods could be encountered by the same consumers under circumstances that could give rise to the mistaken belief that the goods originate from the same source if they are offered under similar marks. *See Coach Servs.*, 668 F.3d at 1396. We therefore find that the parties' respective goods are closely related. Accordingly, the second *DuPont* factor weighs in favor of a finding of likelihood of confusion.

B. Trade Channels and Classes of Consumers

Next, we consider established, likely-to-continue channels of trade, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. Applicant argues that it “intends to offer its product through ecommerce channels,” but “it does not appear that the Cited Registrant sells its mugs online, further underscoring the lack of overlap between the goods and their respective marketing channels.”²⁴ However, neither Applicant's identification of goods nor Registrant's identification of goods has any restrictions as to channels of trade or classes of consumers. Accordingly, we presume that the identifications encompass all goods of the type described, that the goods travel through all normal channels of trade for such goods, and that they are available to all classes of purchasers of such goods. *See Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013); *Univ. of Ky. v. 40-0, LLC*, Opp. No. 91224310, 2021 TTAB LEXIS 68, at *32-33 (TTAB 2021) (“Because there are no limitations on the channels of trade or classes of consumers of the . . . [goods]

²⁴ *Id.* at 10.

identified in the application, the relevant consuming public comprises all potential purchasers of . . . [such goods].”).

And, as already discussed, the evidence of record establishes that the goods at issue may be offered through the same trade channels and thus encountered by the same classes of consumers. Therefore, we find that the third *DuPont* factor also weighs in favor of a finding of likelihood of confusion.

C. Comparison of the Marks

We now consider the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at *13 (TTAB 2018), *aff’d*, 777 Fed. Appx. 516 (Fed. Cir. 2019).

Here, Applicant’s mark is VENTURI in standard characters, and the cited mark is the composite mark below.



Thus, the marks share the wording VENTURI, but the cited mark contains the additional wording SCOTT BROWN and a stylized design element consisting of a curved and looped line in what appears to be the rough shape of a heart.

While the respective marks appear together above, this placement does not reflect the actual conditions under which consumers are likely to encounter the marks in the marketplace. That is, “[t]he 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.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) (quoting *Coach Servs.*, 668 F.3d at 1368). “The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.” *In re Box Sols. Corp.*, Ser. No. 76267086, 2006 TTAB LEXIS 176, at *14 (TTAB 2006).

The Examining Attorney argues that Applicant’s mark and the cited mark are “highly similar in sound, appearance and overall commercial connotation” because “[t]he marks contain the identical dominant term ‘VENTURI.’”²⁵ Applicant, on the other hand, contends that the Examining Attorney’s “analysis fails to give adequate weight to the additional elements present” in the cited mark.²⁶

We agree with Applicant that all elements of the respective marks must be considered. *See In re Viterro Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“[M]arks must

²⁵ Examining Attorney’s Brief, 8 TTABVUE 5.

²⁶ Applicant’s Brief, 6 TTABVUE 6.

be viewed ‘in their entirety,’ and it is improper to dissect a mark . . . , including when a mark contains both words and a design.”); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (stating that “marks must be compared in their entirety”). That said, “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 entirety.” *Nat’l Data*, 753 F.2d at 1058.

In this case, the literal portion of the cited mark, VENTURI SCOTT BROWN, is likely to make a greater impression on consumers who encounter the mark because that is the portion that they will read, recollect, and use to refer to the goods sold under the mark. *See Viterra*, 671 F.3d at 1362 (“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))); *L.C. Licensing, Inc. v. Berman*, Opp. No. 91162330, 2008 TTAB LEXIS 756, at *9 (TTAB 2008) (“[I]t is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods.”).

Further, consumers are generally inclined to focus on, and remember, the first word in the literal portion of a mark. *See, e.g., Palm Bay Imps.*, 396 F.3d at 1372 (finding that, in the mark VEUVE CLICQUOT, CLICQUOT is an important term . . . , but VEUVE nevertheless remains a ‘prominent feature’ as the first word in the mark

and the first word to appear on the label”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876 (Fed. Cir. 1992) (finding CENTURY “central” to the marks CENTURY LIFE OF AMERICA and CENTURY 21 and noting that, “upon encountering each mark, consumers must first notice th[e] identical lead word”). Here, in the cited mark the term VENTURI appears not only first, but by itself in the first line of the literal element. Therefore, VENTURI is likely to make a greater impression on consumers who encounter the cited mark and thus we accord the term greater weight when assessing the similarity of the two marks.

Often, where the entirety of one mark is incorporated in another mark, the likelihood of confusion increases. *See, e.g., Hunter Indus., Inc. v. Toro Co.*, Opp. No. 91203612, 2014 TTAB LEXIS 105, at *33 (TTAB 2014) (“Likelihood of confusion often has been found where the entirety of one mark is incorporated within another.”); *see also Stone Lion*, 746 F.3d at 1320-22 (affirming Board’s finding that the marks at issue were similar where the applicant’s mark STONE LION CAPITAL incorporated the entirety of the cited marks LION CAPITAL and LION); *Double Coin Holdings Ltd. v. Tru Dev.*, Can. No. 92063808, 2019 TTAB LEXIS 347, at *20-23 (TTAB 2019) (finding “the parties’ marks are similar in their entireties” after noting that respondent’s “junior mark, ROAD WARRIOR contains [petitioner’s] entire mark WARRIOR”). We find that to be the case here.

Indeed, because Applicant’s mark, in its entirety, is identical to the first word that appears by itself in the first line of the cited mark, we find that the marks are more similar than dissimilar in terms of sound and appearance. *See, e.g., In re*

i.am.symbolic, llc, Ser. No. 85916778, 2018 TTAB LEXIS 281, at *25 (TTAB 2018) (finding marks more similar than dissimilar where the marks shared the same dominant element, which was identical in sound and meaning); *In re Aquitaine Wine, USA, LLC*, Ser. No. 86928469, 2018 TTAB LEXIS 108, at *5 (TTAB 2018) (“The marks at issue are similar in sight and sound, since they share the term LAROQUE.”).

Applicant argues that, regardless of the respective marks’ shared term VENTURI, the “marks . . . have distinct meanings” because Applicant’s mark “pays tribute to Italian physicist, Giovanni Battista Venturi, whereas the Cited Registration appears to be the combination of Robert Venturi and Denise Scott Brown’s surnames, the married couple who started the brand.”²⁷ However, there is no evidence properly of record to establish that consumers encountering the marks would perceive the marks in this manner. In the absence of this evidence, we presume that whatever connotation VENTURI has, whether as a surname or something else, it would be the same or at least highly similar for both marks, especially when applied to closely related goods.

In reaching this finding, we do not discount the additional elements in the cited mark, but we agree with the Examining Attorney that they do not obviate a likelihood of confusion here. Given that the marks share the term VENTURI, consumers could reasonably assume that Applicant’s goods sold under its VENTURI mark constitute another, related product line from the same source as the goods sold under the cited


²⁷ *Id.* at 7.

mark with which they are acquainted or familiar, and that Applicant's standard character mark is a variation of, or derivative of, the cited mark, or vice versa. *See, e.g., In re Comexa Ltda.*, Ser. No. 75396043, 2001 TTAB LEXIS 274 (TTAB 2001) (applicant's use of term AMAZON and parrot design for chili sauce and pepper sauce is likely to cause confusion with registrant's AMAZON mark for restaurant services); *SMS, Inc. v. Byn-Mar Inc.*, Opp. Nos. 91068062, 1985 TTAB LEXIS 32, at *4 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

Applicant argues that "the mere fact that two marks share a common word is not dispositive,"²⁸ citing *Murray Corp. of Am. v. Red Spot Pain & Varnish Co.*, 280 F.2d 158 (CCPA 1960). We agree with this general proposition, but, as the Examining Attorney points out, the facts of *Murray Corp.* are distinguishable from the facts here. In *Murray Corp.* the marks at issue were EASY for "touch-up enamel supplied in self-spraying containers for application to domestic laundry and other appliances" and EASY TINT for "white paint particularly constructed to be mixed with various colors as desired." *Id.* at 159. The court found that, although EASY TINT incorporated the word EASY in its entirety, the evidence of record established that EASY was suggestive as applied to paints, and thus concluded that there was no likelihood of confusion in light of that and other factors, including how the respective goods would be sold and the connotations created by the respective marks. *See id.* at 160-61. Here,

²⁸ *Id.*

the record does not establish that VENTURI is suggestive or otherwise entitled to a narrower scope of protection. And we agree with the Examining Attorney that, unlike EASY TINT, which creates a different commercial impression than EASY alone, Applicant's mark and the cited mark create similar commercial impressions in that VENTURI could be perceived as a shortened form of the cited mark, which displays VENTURI separately on its own line above the other wording in the mark.²⁹

To summarize, considering the marks in their entirety, we find that they are more similar than dissimilar in appearance, sound, connotation, and overall commercial impression, because the entirety of Applicant's mark, VENTURI, is incorporated into the cited mark . See *In re Charger Ventures*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) (“[A]n additional word or component may technically differentiate a mark but do little to alleviate confusion.”); *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Circ. 2003) (noting that “similarity is not a binary factor but is a matter of degree”); *i.am.symbolic*, 2018 TTAB LEXIS 281, at *25 (“Although the additional wording and design element in Registrant's mark and the hash character in Applicant's mark present dissimilarities, they are not sufficient to overcome the strong similarities in connotation and overall commercial impression that the marks share due to the identity of the dominant element.”).

Therefore, the first *DuPont* factor favors a finding of likelihood of confusion.

²⁹ See Examining Attorney's Brief, 8 TTABVUE 10.

D. Improper Collateral Attack on Cited Registration

Lastly, we address Applicant's arguments that the cited mark "no longer serves as an obstacle to the registration of Applicant's mark"³⁰ because Registrant "has discontinued use of the Cited Registration in connection with mugs,"³¹ and that this alleged "lack of use significantly weakens any argument that the marks are likely to cause confusion in the marketplace."³²

We reject these arguments, because, as the Examining Attorney notes,³³ Applicant's allegations constitute an impermissible collateral attack on the cited registration. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1408 (Fed. Cir. 1997). Under Trademark Act Section 7(b), 15 U.S.C. § 1057(b), a certificate of registration on the Principal Register is "prima facie evidence of the validity of the registered mark . . . , of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate." Thus, in an *ex parte* appeal, the Board will not entertain arguments that constitute a collateral attack on the cited registration, including a registrant's purported nonuse of the cited mark. *See Dixie Rests.*, 105 F.3d at 1408.

III. Conclusion

Having carefully considered all of the arguments and evidence of record pertaining to the relevant *DuPont* factors, we find that the marks in their entireties

³⁰ Applicant's Brief, 6 TTABVUE 12.

³¹ *Id.* at 11.

³² *Id.* at 11-12.

³³ Examining Attorney's Brief, 8 TTABVUE 9.

are more similar than dissimilar in terms of sound, appearance, connotation, and overall commercial impression; that Applicant's goods are closely related to Registrant's goods; and that the respective goods travel in overlapping trade channels and are offered to the same classes of consumers. Therefore, all of the relevant *DuPont* factors weigh in favor of finding that confusion as to source is likely.

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