

This Opinion is not a  
Precedent of the TTAB

Mailed: March 7, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Manic Panic N.Y.C., Inc.*  
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Serial No. 97928060  
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Amy B. Goldsmith of Tarter Krinsky & Drogin LLP  
for Manic Panic N.Y.C., Inc.

Miroslav Novakovic, Trademark Examining Attorney, Law Office 108,  
Kathryn E. Coward, Managing Attorney.

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Before Goodman, Lebow and Bradley,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Manic Panic N.Y.C., Inc. (“Applicant”) seeks registration on the Principal Register of the mark SEA NYMPH (in standard characters) for wigs in International Class 26.<sup>1</sup>

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<sup>1</sup> Application Serial No. 97928060 was filed on May 9, 2023, based upon Applicant’s allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging October 2020 as the date of first use anywhere and first use in commerce.

Page references to the application record are to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system. Applicant’s brief is at 6 TTABVUE; the Examining Attorney’s brief is at 8 TTABVUE.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it so resembles the following Principal Register mark: NYMPH (standard characters) for the following goods in International Class 26:

Crochet hooks; False beards; False moustaches; Hair accessories, namely, plastic styling inserts that create height and volume on the crown of the head; Hair accessories, namely, hair ties, hair scrunchies, bowknot, pompon, twisters, hair sticks; Hair bands; Hair barrettes; Hair coloring caps; Hair curl clips; Hair curl papers; Hair curlers, electric and non-electric, other than hand implements; Hair curlers, electrically-heated, other than hand implements; Hair elastics; Hair netting; Hair pins; Hair ribbons; Heat adhesive patches for repairing textile articles; Ponytail holders; Sewing kits; Bows for the hair; Non-electric hair curlers, other than hand implements; Ponytail holders and hair ribbons; Rubber bands for hair; Synthetic braiding hair.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

### I. Likelihood of Confusion

Section 2(d) of 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 to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts

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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 *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (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, 1379 (Fed. Cir. 2019); *In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at \*2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. See *In re i.am.symbolic, LLC*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“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.”). These factors, and others, are discussed below.

#### A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks 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). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at \*4 (TTAB 2014) (citations omitted).

The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the

marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012).

Applicant's mark is SEA NYMPH and Registrant's mark is NYMPH.

The Examining Attorney and Applicant disagree about the significance of Registrant's mark being subsumed within Applicant's mark and whether or not it is supportive of a finding of likelihood of confusion, referencing opposing cases on this point. 6 TTABVUE 11; 8 TTABVUE 5. Applicant also argues that its mark has "substantial phonetic distinctions" from Registrant's mark. 6 TTABVUE 12.

While there is no rule that marks are automatically considered similar where one encompasses the entirety of another, the fact that Registrant's mark is subsumed in its entirety by Applicant's mark increases the similarity between them. *See, e.g., In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010) (applicant's mark ML is similar to registrant's mark ML MARK LEES); *DowntownDC Bus. Improvement Dist. v. Clarke*, 2024 TTAB LEXIS 412, at \*67-68 (TTAB 2024) (DOWNTOWNDC DISTRICT OF FASHION similar to DISTRICT OF FASHION); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 TTAB LEXIS 347, at \*20 (TTAB 2019) (ROAD WARRIOR and WARRIOR similar); *Hunter Indus., Inc. v. Toro Co.*, 2014 TTAB LEXIS 105, at \*33 (TTAB 2014) (applicant's PRECISION mark similar to Opposer's PRECISION DISTRIBUTION CONTROL mark) (citations omitted); *In re Toshiba*

*Med. Sys. Corp.*, 2009 TTAB LEXIS 447, at \*15-16 (TTAB 2009) (applicant's mark VANTAGE TITAN similar to registrant's mark TITAN).

The marks SEA NYMPH and NYMPH are similar in sound and appearance based on the shared term NYMPH. The marks also have some dissimilarities in sound and appearance due to the addition of SEA in Applicant's mark, which is simply an adjective that indicates the type of nymph at issue. As discussed below, a "nymph" personifies features of nature, such as "waters." Consequently, adding SEA to that wording, which also refers to water, does not distinguish the marks in a meaningful way.

As to connotation, the Examining Attorney provided dictionary definitions of NYMPH as "[a]ny of numerous minor deities represented as beautiful maidens inhabiting and sometimes personifying features of nature such as trees, waters, and mountains" (Greek & Roman mythology)<sup>2</sup> and "one of many goddesses in old legends represented as beautiful young girls living in mountains, forests, meadows and waters."<sup>3</sup> The term NYMPH is arbitrary in relation to the goods. The Examining Attorney also provided a definition of SEA as "a track of water within an ocean"; "a relatively large body of salt water completely or partially enclosed by land"; and "a relatively large landlocked body of fresh water."<sup>4</sup>

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<sup>2</sup> AMERICAN HERITAGE DICTIONARY, [ahdictionary.com](http://ahdictionary.com), May 21, 2024 Office Action at TSDR 2.

<sup>3</sup> MERRIAM-WEBSTER DICTIONARY, [merriam-webster.com](http://merriam-webster.com), May 21, 2024 Office Action at TSDR 3.

<sup>4</sup> AMERICAN HERITAGE DICTIONARY, [ahdictionary.com](http://ahdictionary.com), May. 21, 2024 Office Action at TSDR 4.

Applicant argues that the word NYMPH alone “does not suggest, under any circumstances, any connection to the sea, or does not otherwise ‘encompass all nymphs including those that live in [...] bodies of water’” and may suggest “youthfulness or be associated with small consumers.” 6 TTABVUE 10.

Applicant also argues that the Examining Attorney’s focus on the definition of maidens for NYMPH is conjecture because NYMPH has other definitions. *Id.* Applicant asserts that NYMPH may also refer to “[a] sexually mature and attractive young woman,” a “girl,” “[t]he immature form of an insect, such as a grasshopper, that does not pass through a pupal stage during metamorphosis,” “any of various immature insects” or “[t]he eight-legged immature form of certain arachnids, such as ticks and mites.” *Id.*

However, there is nothing in the record to support Applicant’s argument that consumers would attribute entirely different meanings of NYMPH to Applicant’s and Registrant’s marks in connection with the goods. Both marks could evoke the same meanings in connection with the goods (wigs and, among other things, hair accessories) of a beautiful young girl in the old legends personifying features of nature or an attractive young woman.

Applicant argues that consumers will focus on the first word in its mark which is SEA.<sup>5</sup> Applicant argues that when viewed in their entireties, the marks are dissimilar due to “clear differences in commercial impressions”:

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<sup>5</sup> Applicant argues that if there is a dominant portion of its mark, it would be SEA. 6 TTABVUE 9.

Applicant's Mark evokes aquatic life and suggests a sense of freshness which is not found in the Cited Mark. The Examining Attorney's own evidence shows that the wording 'SEA' refers to 'a body of water.' As such, Applicant reiterates that, when viewed as a whole, Applicant's Mark invokes marine elements and natural beauty. Indeed, the combination of 'SEA' and 'NYMPH' implies the idea of a beautiful girl associated with the ocean—an impression further reinforced when considered in connection with Applicant's Goods, i.e., wigs, which, as demonstrated in the specimen submitted with the Application, are blue like the sea and enhance the consumer's beauty. In contrast, the Cited Mark, 'NYMPH' alone, does not suggest, under any circumstances, any connection to the sea, or does not otherwise 'encompass all nymphs including those that live in [...] bodies of water.' 'NYMPH' alone may suggest youthfulness or be associated with small consumers.

6 TTABVUE 10.

As to connotation and commercial impression, we find that the word SEA in Applicant's mark, is used as an adjective modifying the term NYMPH, to describe the type of NYMPH. The addition of the adjective SEA in Applicant's mark is ancillary to the connotation and commercial impression created by the term NYMPH reinforcing the type of nymph as a goddess or maiden living in nature in the water or personifying the water or sea (sea nymph).

In any event, the dictionary definition of NYMPH provided by the Examining Attorney indicates that even without the addition of SEA, NYMPH may refer to a beautiful young woman or goddess in nature which includes one that lives in the water or the sea, or NYMPH personifies water which would include the sea.

We find that Applicant's and Registrant's marks have similar connotations and commercial impressions.

We also find that consumers may perceive the marks as brand extensions of each other. *See, e.g., Double Coin Holdings*, 2019 TTAB LEXIS 347, at \*23 ("Here, ROAD

WARRIOR looks, sounds, and conveys the impression of being a line extension of WARRIOR”); *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 2013 TTAB LEXIS 314, at \*32 (TTAB 2013) (“Purchasers of opposer’s GOTT and JOEL GOTT wines are likely to assume that applicant’s goods, sold under the mark GOTT LIGHT and design, are merely a line extension of goods emanating from opposer”).

In considering the marks in their entirety, and in view of the similar connotations and commercial impressions, we find the marks are highly similar. The overall similarity of the marks weighs strongly in favor of a finding of likelihood of confusion.

#### B. Similarity or Dissimilarity of the Goods

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods as described in an application or registration.” *Dupont*, 476 F.2d at 1361. Our analysis under this factor is based on the identifications of goods in the application and the cited registration. *See In re i.am.symbolic, llc*, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed.Cir.1990). It 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 or registration. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir.



2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, 2007 TTAB LEXIS 58, at \*28-29 (TTAB 2007)).

Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements or internet webpages showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant’s goods (or similar goods) and the goods (or similar goods) listed in the cited registration. *See, e.g., In re Davia*, 2014 TTAB LEXIS 214, at \*19 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

Evidence that “a single company sells the goods ... of both parties, if presented, is relevant to a relatedness analysis.” *Hewlett-Packard*, 281 F.3d at 1267; *see also In re Embiid*, 2021 TTAB LEXIS 168, at \*39 (TTAB 2021) (evidence of third-parties offering goods of both applicant and registrant pertinent to relatedness of the goods).

Applicant’s goods are wigs. Registrant’s goods include “false beards,” “false moustaches,” “hair band,” “hair scrunchies,” and “bows for the hair.”

The Examining Attorney provided internet websites that offer false (synthetic) beards, false (synthetic) moustaches and wigs, some of them offering the wigs and synthetic facial hair in sets:<sup>6</sup> John Blake's Wigs and Facial Hair (johnblakeswigs.com), Morris Costumes (morriscostumes.com), Norcostco (norcostco.com), City Costume Wigs (citycostumewigs.com), Funidelia (funidelia.com), Adele's of Hollywood (adelescostumes.com), Off Broadway (offbroadwayvintage.com), Best Wig Outlets (bestwigoutlet.com), and MorphCostumes (morphsuits.com).<sup>7</sup> May 21, 2024 Office Action at TSDR 7-32. The Examining Attorney also provided internet webpages from Uniwigs (uniwigs.com) and Wigs is Fashion (wigsisfashion.com) relating to wigs and wig accessories, including hair bows or hair scrunchies.<sup>8</sup> February 2, 2024 Office Action at TSDR 3-7.

Applicant submits that the goods are unrelated. 6 TTABVUE 14, 17. Applicant argues that the fact that Applicant's and Registrant's Goods "could be found at the same store does not, ipso facto, prove that there is a definite relationship between these two types of goods" and that "the mere sale of goods by the same store does not necessarily imply a connection in terms of their source." *Id.* at 13-14. Applicant also argues that "the mere fact that products and services may move in the same channels of trade to the same class of purchasers does not, ipso facto, prove that there is a

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<sup>6</sup> Five of the webpages show wigs and facial hair sold as sets; two webpages show facial hair and wigs under the same webpage/category; and two of the webpages show facial hair alone, with wigs as a separate category, accessed by a webpage link.

<sup>7</sup> The Examining Attorney includes the Theatre Garage website, which is a Canadian website.

<sup>8</sup> The relatedness evidence as to items such as hair scrunchies, hair bows, hair bands and wigs is very limited.

definite relationship between different types of goods.”<sup>9</sup> *Id.* at 16. Applicant submits that “the modern consumer is well aware that the mere offering of goods through the Internet or the same department store does not necessarily imply a connection in terms of their source. Therefore, Registrant’s Goods are unrelated to Applicant’s Goods.” *Id.* at 16.

While it is true that “the law is that products should not be deemed related simply because they are sold in the same kind of establishments,” *Recot*, 214 F.3d at 1330, the above-mentioned internet website evidence is not from online “department stores” or “big box” online retailers selling a wide variety of goods from different suppliers. Rather, the website evidence shows online specialty stores offering wigs and facial hair (false beards and mustaches) or wigs, facial hair and costumes. “This targeted type of retailing is narrower in scope, and the fact that more targeted sellers offer the goods of both the Registrant and the Applicant tells us that the goods are related.” *In re Ox Paperboard, LLC*, 2020 TTAB LEXIS 266, at \*17 (TTAB 2020).

We further note that the website evidence also shows that wigs and facial hair (false moustaches and beards) may be used together or are sometimes sold in sets. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[c]omplementary use has long been recognized as a relevant consideration in determining a likelihood of confusion.”); *see also In re Ox Paperboard*, 2020 TTAB LEXIS 266, at \*17 (“paperboards used for protective packaging” and

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<sup>9</sup> We view this argument to be directed to the relatedness of the goods and not trade channels.

“corrugated containers” are complementary items used and sold together in packaging products for shipment).

Applicant also argues (citing cases) that “the TTAB have on numerous occasions found a lack of likelihood of confusion even between two identical marks (which is a closer case than the present one, where Applicant’s Mark and the Cited Mark are not identical), and even when goods would appear to be more closely related, or complementary than in the instant refusal.” 6 TTABVUE 13, 15.

However, “[e]ach 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). On this record, we find Applicant’s wigs and Registrant’s false moustaches and false beards are related. Therefore, Applicant’s and Registrant’s identified goods are related in part.

The second *DuPont* factor weighs strongly in favor of a finding of likelihood of confusion.

### C. Similarity or Dissimilarity of Trade Channels and Conditions of Sale

The third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361. Our analysis under this factor is based on the identifications of goods in the application and the cited registration. *Octocom Sys.*, 918 F.2d at 942. *See also In re Detroit Ath. Co.*, 903 F.3d 1297, 1308 (Fed. Cir. 2018) (“the third *DuPont* factor—like the second 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”).

We also consider under *DuPont* the classes of consumers, which in this case is the general public.

In the absence of an explicit restriction, the identified goods in the application and cited registration must be presumed to move in all channels of trade that would be normal for such goods and to all usual prospective purchasers for goods of that type. *DeVivo v. Ortiz*, 2020 TTAB LEXIS 15, at \*40 (TTAB 2020); see *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581 (Fed. Cir. 1983) (in the absence of specific limitations in the identification, we must assume that the goods travel in “the normal and usual channels of trade and methods of distribution” for those types of goods.).

Neither the application nor the cited registration contain any restriction on the channels of trade or classes of purchasers. As such, the goods—at least wigs and synthetic facial hair—presumptively move in all normal trade channels and to the same consumers that purchase such goods. The website evidence discussed above shows that the typical trade channels for Applicant’s and Registrant’s goods are generally websites specializing in wigs, false beards and mustaches or specializing in wigs, false beards and moustaches and costumes. In addition, the classes of consumers overlap—those in the general public seeking wigs and facial hair (false beards and moustaches). Therefore, this *DuPont* factor weighs in favor of finding a likelihood of confusion.

The fourth *DuPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361.

Applicant argues that “the respective marks do not target the same type of consumers: “Applicant’s Mark aims to attract sophisticated consumers searching for clothing with a compelling story, whereas the Cited Mark targets customers looking for casual apparel.” 6 TTABVUE 15. However, Applicant has failed to submit evidence to support this contention which appears to be mere attorney argument. *See In re Iolo Techs. LLC*, 2010 TTAB LEXIS 223, at \*12 (TTAB 2010) (“Applicant urges us to consider consumer sophistication as a factor. However, applicant has submitted no evidence that either its consumers or those of registrant would be sophisticated.”); *see also Enzo Biochem v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”).

Neither Applicant’s nor Registrant’s goods are restricted to any particular price point or consumer. When the goods are unrestricted, it is assumed that they are sold at all price points, to all purchasers, including those purchasers exercising only ordinary care. *Primrose Ret. Cmty., LLC v. Edward Rose Senior Living, LLC*, 2016 TTAB LEXIS 604, at \*29-30 (TTAB 2016) (“We must therefore presume that [Registrant’s] and Applicant’s [goods] are offered to both sophisticated and unsophisticated consumers, and that their purchasing decisions ... range from thoughtful to hasty”). Importantly, we must consider the degree of care that would be exercised by the least sophisticated consumer. *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014).

As stated, there is no evidence that the least sophisticated potential purchasers of wigs exercise particular care in purchasing the goods. Accordingly, we find this *DuPont* factor is neutral.

D. Thirteenth *DuPont* Factor

The thirteenth *DuPont* factor considers “any other established fact probative of the effect of use.” *DuPont*, 476 F.2d at 1361.

Applicant argues that it is “the owner of U.S. Reg. No. 5,078,008 for ‘SEA NYMPH’ in connection with cosmetics.”<sup>10</sup> Applicant submits that the Office found its earlier registered SEA NYMPH mark dissimilar in commercial impression from Registrant’s mark and that determination should be applicable here. 6 TTABVUE 14.

When determining whether the coexistence of an applicant’s prior registration with another party’s registration weighs against citing the latter registration in a Section 2(d) refusal of the applicant’s mark, we consider (1) whether the applicant’s prior registered mark is the same as applicant’s mark or is otherwise not meaningfully different; (2) whether the identifications of goods or services in the application and the applicant’s prior registration are identical or identical in relevant part; and (3) the length of time the applicant’s prior registration has coexisted with the registration being considered as the basis for the Section 2(d) refusal. *In re Strategic Partners, Inc.*, 2012 TTAB LEXIS 80, at \*6-8 (TTAB 2012).

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<sup>10</sup> Applicant attached a plain copy of the prior registration to its brief as an exhibit. Ordinarily, the Board would not consider such evidence filed after the appeal under Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), but because the Examining Attorney did not object to its consideration, and in fact addressed the registration in the brief, we have considered it as if the Examining Attorney had stipulated to its admission.

Applicant's earlier registered mark SEA NYMPH is identical to the mark in the involved application.<sup>11</sup> It has co-existed with the later-filed registration (which issued on January 28, 2020). However, unlike *Strategic Partners*, Applicant's current application identifies goods (wigs) that are not identical to the goods for which its earlier registration covers (cosmetics).

Therefore, we find *Strategic Partners* is not applicable in this instance because the registration does not cover the same goods. *Cf. In re Inn at St. John's, LLC*, 2018 TTAB LEXIS 170, at \*18-19 (TTAB 2018) (declining to extend *Strategic Partners* where an applied-for mark was "partially" similar to the mark in an existing registration owned by that applicant although the services were identical).

We find this *DuPont* factor neutral.<sup>12</sup>

## II. Conclusion

We find the marks are highly similar, the goods are related in part, the trade channels overlap as to wigs and facial hair, and the fourth and thirteenth *DuPont* factors are neutral. We find confusion likely.

### **Decision:**

The Section 2(d) refusal to register Applicant's mark SEA NYMPH is affirmed.

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<sup>11</sup> The registration issued November 8, 2016 and is incontestable.

<sup>12</sup> In addition, we must decide each case on its unique facts and the record before us. *In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001).