

This Opinion is Not a  
Precedent of the TTAB

Mailed: April 2, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board

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*In re Castro Diana Mariel*

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Serial No. 98059004

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Jordan Pavlow of Markavo.com  
for Castro Diana Mariel.

Laura Golden, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

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Before Adlin, Lynch and Elgin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Castro Diana Mariel seeks registration of MOBBIES, in standard characters, for “dresses for UTV and dirt bike enthusiasts; hats for UTV and dirt bike enthusiasts; pants for UTV and dirt bike enthusiasts; shirts for UTV and dirt bike enthusiasts; shorts for UTV and dirt bike enthusiasts; t-shirts for UTV and dirt bike enthusiasts; hoodies for UTV and dirt bike enthusiasts; beanies for UTV and dirt bike enthusiasts; long jackets for UTV and dirt bike enthusiasts; all the forgoing excluding wetsuits, drysuits, boots, and gloves,” in International Class 25.<sup>1</sup> The Examining

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<sup>1</sup> Application Serial No. 98059004, filed June 26, 2023 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged bona fide intent to use the mark in commerce. “UTV” stands for “utility task vehicle.”

Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the registered mark MOBBY’S, in typed form,<sup>2</sup> for “wetsuits, drysuits, boots, and gloves,” also in International Class 25,<sup>3</sup> that it is likely to cause confusion. After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. Applicant and the Examining Attorney filed briefs.

### **I. Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We must consider each *DuPont* factor about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1381 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry

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<sup>2</sup> There is no substantive difference between “standard character” marks and marks in “typed” form. *In re Viterra Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012) (“[U]ntil 2003, ‘standard character’ marks formerly were known as ‘typed’ marks, but the preferred nomenclature was changed in 2003 to conform to the Madrid Protocol ... [W]e do not see anything in the 2003 amendments that substantively alters our interpretation of the scope of such marks”). As part of an internal Board pilot program to broaden acceptable forms of legal citation in Board cases, 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 U.S. Court of Appeals decisions by the page numbers on which they appear in the Federal Reporter (e.g. F.2d, F.3d, or F.4th). For Board opinions, this decision cites to the Westlaw legal database.

<sup>3</sup> Registration No. 1613039, issued September 11, 1990; renewed.

mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

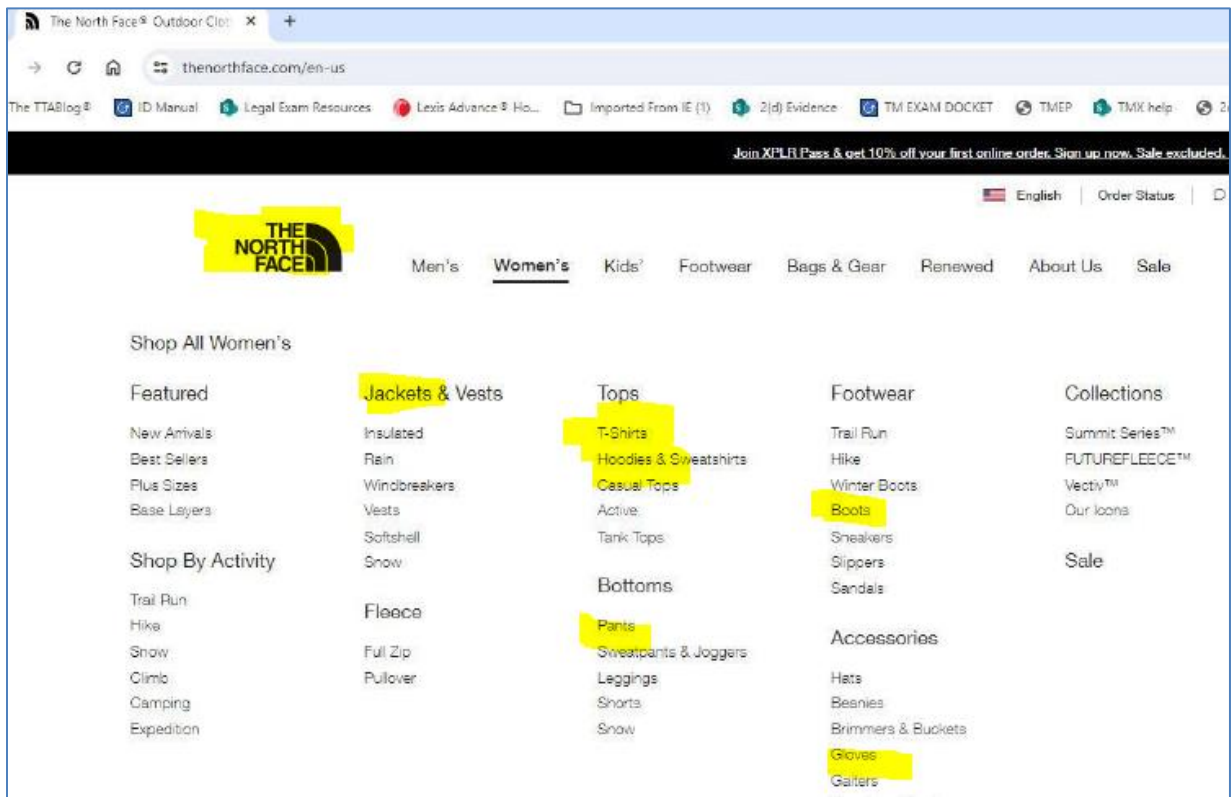
**A. The Goods, and Their Channels of Trade and Classes of Consumers**

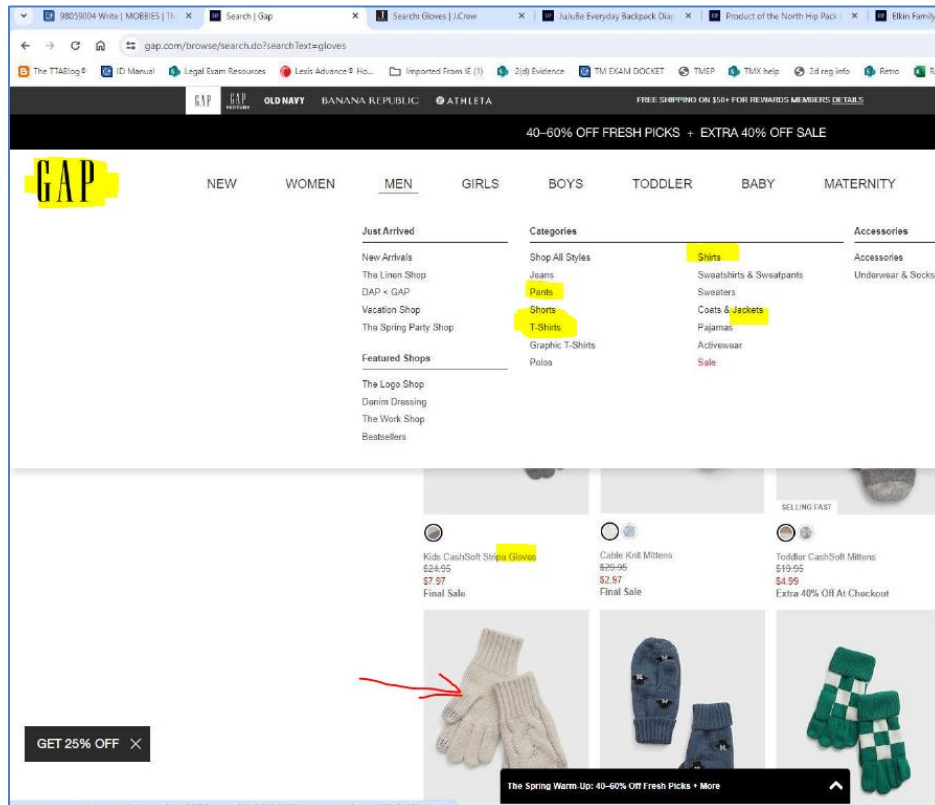
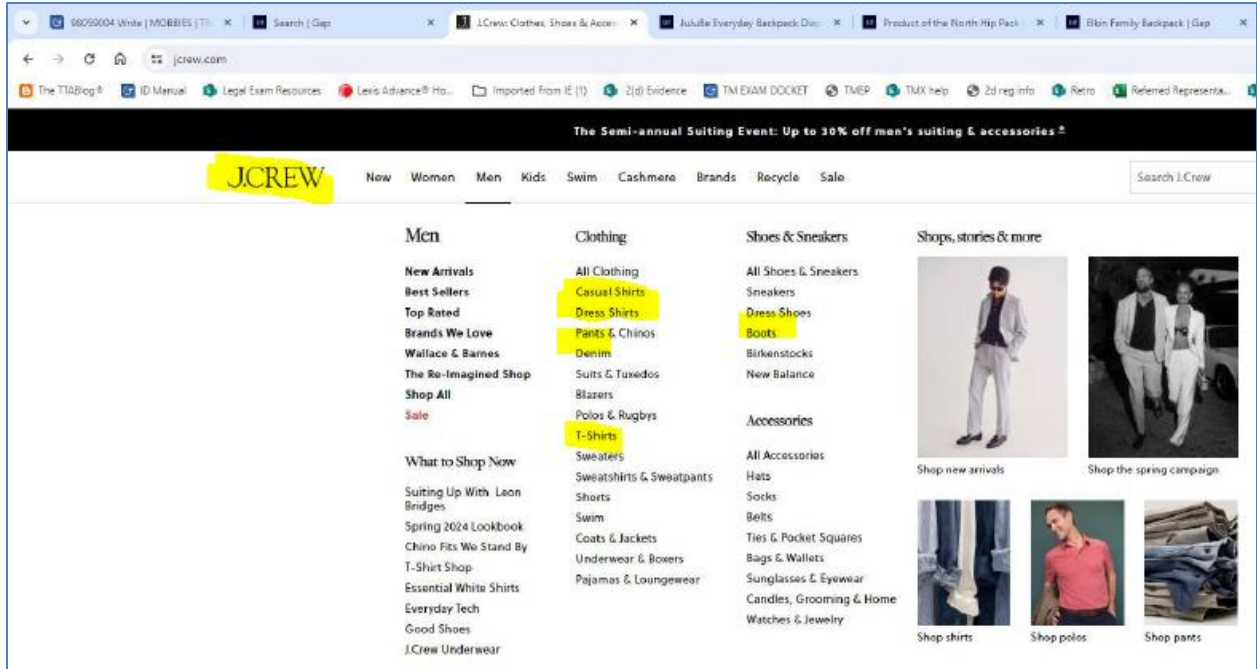
The second *Du Pont* factor considers the “similarity or dissimilarity and nature of the ... [goods] as described in an application or registration.” *In re Detroit Athl. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018) (quoting *Du Pont*, 476 F.2d at 1361). In considering the identified goods, we keep in mind that they need not be identical or even competitive in order to find a likelihood of confusion. Rather, the question is whether the goods are marketed in a manner that “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) (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 WL 1431084, at \*6 (TTAB 2007)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods”).

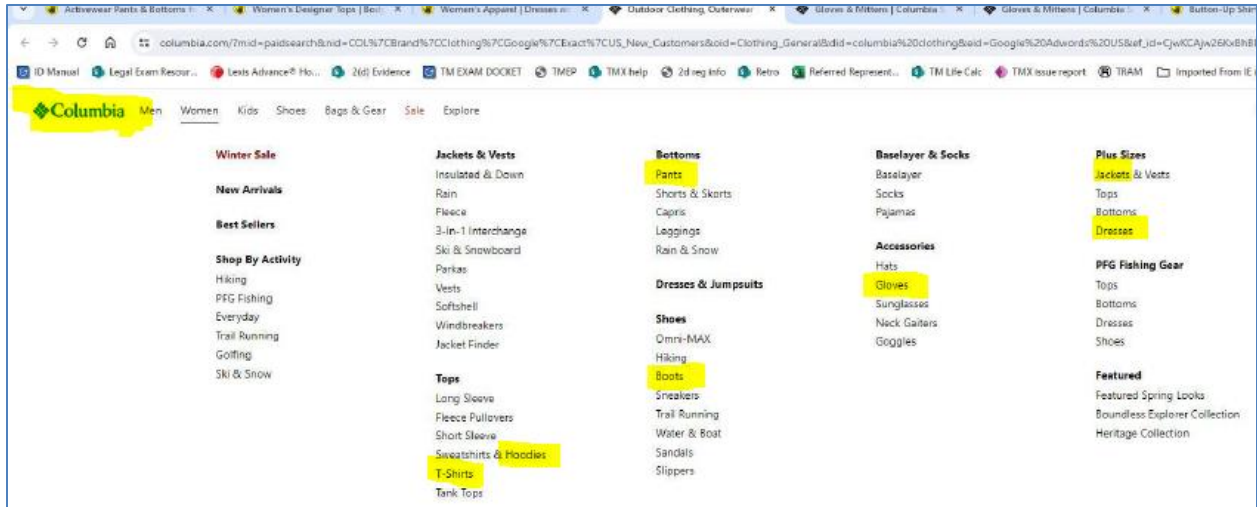
Here, the Examining Attorney argues that third-party websites establish a relationship between the goods, because they show that some entities use the same marks for boots or gloves (identified in the cited registration) on the one hand, and shirts, pants or hoodies (identified in the involved application) on the other. *See In re*

*Detroit Athl. Co.*, 903 F.3d at 1306 (crediting relatedness evidence showing that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

For example, the marks THE NORTH FACE, GAP, J. CREW and COLUMBIA are used for “gloves” or “boots,” identified in the cited registration, and “shirts” or “pants,” which are among the goods identified in the involved application, as shown below:







March 12, 2024 Office Action TSDR 6-11, 21-30 (highlighting added); April 24, 2024 Office Action TSDR 61-68 (highlighting added).

In addition, the SMARTWOOL mark is used for “gloves,” identified in the cited registration, and “tops,” “pants” and “jackets,” identified in the involved application. April 24, 2024 Office Action TSDR 34-40. Similarly, the EDDIE BAUER mark is used for “gloves” and “boots,” identified in the cited registration, and “shirts,” “pants,” “hoodies” and “jackets,” identified in the involved application. *Id.* at 31-33. The marks OISELLE and L.L. BEAN are used for “gloves” on the one hand, and “tees,” “shirts,” “pants,” “shorts” or “jackets” on the other. *Id.* at 20-29.

Applicant points out that her mark “is specifically associated with apparel designed for UTV (Utility Task Vehicle) and dirt bike enthusiasts.” 6 TTABVUE 3.<sup>4</sup> She also argues that the goods identified in the cited registration “cater to water sports and aquatic activities, which are fundamentally different from the land-based

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<sup>4</sup> Citations to the appeal record are to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

activities associated with UTV and dirt biking.” *Id.* The problem for Applicant, however, is that the “boots, and gloves” identified in the cited registration are not limited to boots and gloves for “water sports and aquatic activities.” Rather, Registrant’s boots and gloves are identified without limitation, and thus the cited registration covers the “full scope” of these goods, i.e. any type of gloves or boots. *See Stone Lion Cap. Partners, L.P vs. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014). And, as the Examining Attorney’s evidence discussed above shows, boots and gloves are sold under the same marks as shirts, pants, jackets and other goods identified in the involved application.


Furthermore, consumers may not be aware that Applicant’s goods are “for UTV and dirt bike enthusiasts” specifically, or that Applicant does not offer boots or gloves. However, consumers will be aware that third parties offer boots or gloves under the same marks as shirts, pants, jackets and other goods identified in the involved application.

In any event, the Examining Attorney introduced evidence showing that some of Applicant’s competitors in the field of dirt biking offer “boots” and “gloves” that fall within Registrant’s identification of goods. In fact, Fox Racing offers “dirt bike boots” and “dirt bike gloves,” Alpine Stars offers “motocross” boots and gloves, and Leatt offers “moto”/“dirt bike” boots and gloves. August 16, 2024 Denial of Request for Reconsideration TSDR 8, 11-29, 31-32, 35-48. Moreover, those third parties offer products not specifically intended for “UTV and dirt bike enthusiasts.” In addition to offering dirt bike boots and gloves: Fox Racing offers “casual shirts,” “casual pants”

and other items that are not intended for dirt bikers; Alpine Stars offers “urban contemporary” clothing, including jackets and pants; and Leatt offers “casual wear,” including hoodies, jackets and t-shirts. *Id.* at 8, 53, 56.

The Examining Attorney also introduced ten third-party registrations showing that the same marks are registered for boots or gloves on the one hand, and shirts, pants, hats, dresses, hoodies, shorts or jackets on the other, including the following:

TODDLAND (Reg. No. 6129941) is registered for “gloves,” as well as “dresses,” “jackets,” “pants” and “shirts.”

 (Reg. No. 6367520) is registered for “boots” and “gloves for apparel” on the one hand, and “dresses,” various types of “shirts,” “pants” and “jackets” on the other.

RUDDER USA (Reg. No. 6167704) is registered for “gloves” as well as “jackets,” “pants,” “dresses” and “shirts.”

DELOYA (Reg. No. 6213080) is registered for “gloves” on the one hand and “fashion hats,” “shirts,” “jackets” and “pants” on the other.



(Reg. No. 7000882) is registered for “gloves,” “shirts,” “pants,” “jackets” and “hats.”

URCURVE (Reg. No. 6141380) is registered for “gloves as clothing,” “dresses,” “hats,” “jackets,” “pants” and “shirts.”

WHITEPEAK (Reg. No. 6344692) is registered for “gloves” on the one hand and “hats,” “baby hooded shirts,” “baby pants” and “dinner jackets” on the other.

ADVENTURELY (Reg. No. 6406666) is registered for “gloves,” “dresses,” “hats,” “jackets,” “pants” and “short-sleeved or long-sleeved t-shirts.”



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THE GANNA (Reg. No. 7129634) is registered for “gloves” on the one hand and “shirts,” “jackets,” “pants,” “dresses” and “hats” on the other.

MARCO KRUSH (Reg. No. 6503356) is registered for “gloves,” “shirts,” “hats,” “pants,” “dresses” and “jackets.”

April 24, 2024 Office Action TSDR 69-89. “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, Serial No. 73603019, 1988 WL 252484, at \*3 n.6 (TTAB 1998). Thus, this evidence corroborates the third-party use evidence upon which the Examining Attorney relies.

In short, the record establishes that Applicant’s and Registrant’s goods are related, as it establishes that “consumers are accustomed to seeing a single mark associated with a source that sells” both the types of goods identified in the cited registration, and the types of goods identified in the involved application. *In re Detroit Athl. Co.*, 903 F.3d at 1306. This evidence is supported by the third-party registration evidence. This factor weighs in favor of finding a likelihood of confusion.

Moreover, there is ample evidence that gloves or boots, identified in the cited registration, are sold via the same clothing-focused websites to the same consumers as shirts, pants, jackets, hats, dresses and other products identified in the involved application, including those specifically for UTV or dirt bike enthusiasts. March 12, 2024 Office Action TSDR 6-29; April 24, 2024 Office Action TSDR 20-39, 61-68;

August 16, 2024 Denial of Request for Reconsideration TSDR. The record also shows that all of these goods are sold to the same classes of consumers. *Id.* Thus, the channels of trade and classes of consumers overlap, and this factor also weighs in favor of finding a likelihood of confusion.

## **B. The Marks**

We consider the marks “in their entireties 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). Here, even though the marks are spelled differently, they are quite similar in several ways, and could in fact be pronounced identically. While Applicant pointed out some of the marks’ differences during prosecution, in her Appeal Brief she does not address the marks at all, effectively conceding that they are similar. We find that the marks’ similarities significantly outweigh their differences.

First, and perhaps most importantly, we would expect the marks to be pronounced identically. They each begin with “MOBB,” and because of the apostrophe in the “YS” at the end of Registrant’s mark, that part of Registrant’s mark would likely be pronounced the same as the “IES” at the end of Applicant’s mark, with both pronounced as “ees.” It is settled that similarity in sound alone may be enough to establish that marks are confusingly similar. *In re 1st USA Realty Prof., Inc.*, Ser. No. 78553715, 2007 WL 2315610, at \*5 (TTAB 2007); *In re White Swan Ltd.*, Ser. No. 617169, 1988 WL 252416, at \*2 (TTAB 1988); *Re/Max of Am., Inc. v. Realty Mart, Inc.*, Opp. No. 91059684, 1980 WL 30159, at \*5 (TTAB 1980) (“Turning first to the similarities between the respective marks, we note that applicant’s mark ‘REMACS’

and the mark of opposer, namely ‘RE/MAX’ are indistinguishable in sound; and it has been consistently held that similarity in any one of the elements of sound, appearance, or meaning is sufficient to indicate a likelihood of confusion.”). *See generally Krim-Ko v. Coca-Cola Bottling 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.”).

Second, the marks look more similar than dissimilar, despite having somewhat different spellings. This is especially so because the first part of each mark is identical, and both end with “S”. To the extent some consumers who see the marks side-by-side may notice the spelling differences between them, that is not how consumers typically encounter marks, and not how we must compare them. *Coach Servs.*, 668 F.3d at 1368 (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, Opp. No. 91160856, 2007 WL 749713, at \*5 (TTAB 2007)). Rather, we must consider whether the differences between the marks are likely to be recalled by purchasers seeing the marks “at spaced intervals,” i.e. consumers who encounter one of the marks first, and do not encounter the other until later. *Grandpa Pidgeon’s of Mo., Inc. v. Borgsmiller*, 477 F.2d 586, 587 (CCPA 1973). In other words, we must keep in mind: (1) “the fallibility of memory over a period of time;” and (2) that the “average” purchaser “normally retains a general rather than a specific impression of trademarks.” *Sealed Air Corp. v. Scott Paper Co.*, Ser. No. 391022, 1975 WL 20752, at \*3 (TTAB 1975); *see also In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (“marks must be considered in light of the fallibility of memory”) (citation, internal

quotation marks, and ellipsis omitted). Consumers could easily forget that one of two marks that sound identical ends with “IES,” while the other ends with “Y’S”.

As for meaning and commercial impression, we recognize that the cited mark conveys clothing owned or offered by “MOBBY,” while the involved mark does not convey possession. At the same time, however, consumers with a general rather than specific impression of these marks may not appreciate or remember this difference, especially where the marks sound identical.

Ultimately, we find that the marks’ minor differences in spelling and commercial impression are outweighed by their likely identical, or at least highly similar sound, as well as the marks’ similar appearance. This factor also weighs in favor of finding a likelihood of confusion.

## **II. Conclusion**

The goods are related and travel in some of the same channels of trade to overlapping classes of consumers. The marks are more similar than dissimilar. Confusion is likely.

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