

**This Opinion is Not a
Precedent of the TTAB**

Mailed: September 5, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Circadia by Dr. Pugliese, Inc.
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Serial No. 98199159
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Joseph R. Falcon III of Barley Snyder,
for Circadia by Dr. Pugliese, Inc.

Elaine Xu, Trademark Examining Attorney, Law Office 128,
Colleen Cassidy, Managing Attorney.
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Before Dunn, Myles and O'Connor,
Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Circadia by Dr. Pugliese, Inc. (“Applicant”) seeks registration on the Principal Register of the standard character mark ELEMENTAL BEAUTY (BEAUTY disclaimed) for “professional non-medicated skincare preparations,” in International Class 3.¹

¹ Application Serial No. 98199159 was filed on September 27, 2023 pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce.

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that the mark, when used in connection with the identified goods, is likely to cause confusion, mistake or deception with the registered mark BEAUTY IS ELEMENTAL for “nutritional supplements,” in International Class 5 (the “Cited Registration” or “Cited Mark”).²

When the refusal was made final, Applicant appealed and requested reconsideration. The request for reconsideration was denied, the appeal was resumed, and is now fully briefed. We affirm the refusal to register.

I. Likelihood of Confusion

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the “*DuPont* factors”). 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).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See In re Charger Ventures*, 64 F.4th at 1381 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the

² Registration No. 6019569 issued on March 24, 2020 on the Principal Register.

analysis.”) (citation omitted). In determining likelihood of confusion, two key considerations are the similarities between the marks and the similarities between the goods. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976).

A. Similarity or Dissimilarity of the Marks

We compare Applicant’s mark ELEMENTAL BEAUTY and the Cited Mark BEAUTY IS ELEMENTAL “in their entirety as to appearance, sound, connotation and commercial impression.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). “The 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.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373 (Fed. Cir. 2018) (cleaned up). Further, the marks must be considered in light of the fallibility of memory. *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014).

Here, both marks contain the identical words ELEMENTAL and BEAUTY, with Applicant’s mark ELEMENTAL BEAUTY transposing the terms BEAUTY and ELEMENTAL and omitting the word “IS.” Use of the identical words ELEMENTAL and BEAUTY lends visual and phonetic similarities to the marks, as well as similarities in connotation and overall commercial impression. Although not conclusive on the issue of likelihood of confusion, marks that include this type of “‘transposition’ of the most important words comprising the marks have been found

to be similar.” *Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 228, at *47 (TTAB 2022) (citing *Bank of Am. Nat’l Trust and Sav. Ass’n v. Am. Nat’l Bank of St. Joseph*, 1978 TTAB LEXIS 149, at *11 (TTAB 1978) (“the words ‘BANKAMERICA’ and ‘BANK OF AMERICA’, on the one hand, and ‘AMERIBANC’, on the other, convey the same meaning and create substantially similar commercial impressions”). Although the marks here differ in structure, we agree with the Examining Attorney that they still impart the same or similar meaning because both marks “convey beauty that [] is elemental.”³

Applicant argues nonetheless that

The marks convey wholly distinct meanings. ELEMENTAL BEAUTY evokes a natural, elemental aesthetic, suggesting purity and simplicity in skincare—a concept tailored to topical beauty products. BEAUTY IS ELEMENTAL, as a declarative slogan, asserts that beauty is inherently fundamental, projecting a philosophical or health-focused message suited to ingestible supplements. These divergent connotations create entirely different commercial impressions, particularly when tied to their respective goods. See *In re British Bulldog, Ltd.*, 224 U.S.P.Q. 854, 856 (TTAB 1984) (PLAYERS for underwear and shoes distinct due to different connotations).⁴

We are not persuaded by this argument. In the *British Bulldog* case, the mark PLAYERS was found to have different connotations when applied to “shoes” as opposed to “men’s underwear.” *In re British Bulldog, Ltd.*, Ser. No. 73354851, 1984 TTAB LEXIS 15, at *8 (TTAB 1984) (“PLAYERS’ for shoes implies a fit, style, color and durability adapted to outdoor activities. ‘PLAYERS’ for men’s underwear implies

³ August 20, 2024 Final Office Action, TSDR 5; 8 TTABVUE 5.

⁴ 6 TTABVUE 12.

something else, primarily indoors in nature.”). Here, the terms ELEMENTAL and BEAUTY do not convey such clearly different connotations when applied to the parties’ involved goods.

Applicant further argues that in its mark the dominant word ELEMENTAL, not the disclaimed word BEAUTY, “drives its naturalistic impression, while the Cited Mark’s structure emphasizes ‘BEAUTY’ as a declarative concept.”⁵ But we must consider all of the words in the marks when determining likelihood of confusion. *See In re Charger Ventures*, 64 F.4th at 1382 (“Disclaimer of a word in an application to register a mark has ‘no legal effect on the issue of likelihood of confusion’ because the public is unaware what words have been disclaimed. Thus, the Board must consider the mark in its entirety.”) (internal citations omitted). Use of the word BEAUTY in Applicant’s mark—even if disclaimed—only adds to the similarity of the marks.

Consumers are unlikely to notice the “nuanced linguistic differences” that Applicant asserts exist between the marks.⁶ As reasoned by the Examining Attorney, in ELEMENTAL BEAUTY, the word ELEMENTAL modifies BEAUTY, indicating that beauty has the characteristic of being elemental, and in BEAUTY IS ELEMENTAL “the connector IS indicates that beauty possesses an elemental quality.”⁷ Thus, both marks convey the idea of beauty having an elemental quality or characteristic and create similar commercial impressions, which are not changed by

⁵ *Id.*

⁶ *Id.*

⁷ 8 TTABVUE 4.

the different structures or the additional word IS. *Cf. Made in Nature*, 2022 TTAB LEXIS 228, at *48 (NATURE MADE likely to be confused with MADE IN NATURE; “In this case, the peripheral difference of the presence or absence of the term ‘IN’ fails to distinguish the parties’ marks.”). Nor did the Examining Attorney oversimplify the distinctions between the marks because the “proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks.” *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 TTAB LEXIS 108, at *4-5 (TTAB 2018).

Comparing the marks in their entirety, we find that they are similar in appearance, sound, connotation and overall commercial impression, with the first *DuPont* factor weighing in favor of a likelihood of confusion.

B. Similarity or Dissimilarity of the Goods, Trade Channels and Classes of Consumers

We next consider the “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” the “similarity or dissimilarity of established, likely-to-continue trade channels” and the classes of consumers. *DuPont*, 476 F.2d at 1361. With each factor, our determination must be based not on evidence of use, but on the identification of goods in the Application and Cited Registration. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d at 1307 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration, and not on real-world conditions.”) (cited in *In re Charger Ventures*, 64 F.4th at 1383) (emphasis omitted).

Under the second *DuPont* factor, the goods “need not be identical or even competitive to find a likelihood of confusion.” *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 TTAB LEXIS 381, at *4 (TTAB 2019) (citations omitted). “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 [the goods] emanate from the same source.’” *Id.* at *4-5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir 2012)).

Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; or copies of prior use-based registrations of the same mark for both applicant’s goods and the goods listed in the cited registration.

In re Embiid, Ser. No. 88202890, 2021 TTAB LEXIS 168, at *30 (TTAB 2021) (quoting *In re Ox Paperboard, LLC*, Ser. No. 87847482, 2020 TTAB LEXIS 266, at *15 (TTAB 2020)). The issue is not whether purchasers would confuse the goods, but whether there is a likelihood of confusion as to the source of the goods. *L’Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 TTAB LEXIS 77, at *20 (TTAB 2012) (citing *In re Rexel Inc.*, Ser. No. 73241423, 1984 TTAB LEXIS 57 (TTAB 1984)).

Applicant’s goods are “professional non-medicated skincare preparations” and Registrant’s goods are “nutritional supplements.” Applicant does not contend, nor do we find, that the word “professional” limits Applicant’s goods, such as to those of any particular type or grade. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1043 (Fed. Cir. 1983) (improper to limit goods where there was no specific limitation and nothing in

the inherent nature of the goods restricted their usage); *Iron Balls Int'l Ltd. v. Bull Creek Brewing, LLC*, Can. No. 92079099, 2024 TTAB LEXIS 205, at *56 (TTAB 2024) (proposed restriction to “micro-brewed craft beer” did not affect the nature of respondent’s beer and did not impose a meaningful limitation for purposes of likelihood of confusion) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322-23 (Fed. Cir. 2017)); see also *Board of Regents v. Southern Ill. Miners, LLC*, Opp. No. 91183196, 2014 TTAB LEXIS 92, at *25, 29 (TTAB 2014) (prefatory language “college imprinted” and “professional baseball imprinted” in goods identifications did not meaningfully distinguish the parties’ goods). In this context, we consider the prefatory word “professional” as an aspirational or marketing reference to the general quality of the goods rather than a limitation to any particular type or grade of product.⁸

The Examining Attorney argues that the goods are related because they are sold through the same trade channels and used by the same classes of consumers in the same fields of use, for similar or complementary purposes. In support, the Examining Attorney made of record Internet evidence of the following third parties that offer both skincare preparations and nutritional supplements under the same mark and on the same website:

⁸ This is supported by evidence in the record of companies that offer the involved goods for sale to the general public using the word “professional” or similar terms. See February 22, 2025 Denial of Request for Reconsideration, TSDR 7 (Face Reality offers clear skin supplement “[d]esigned by the #1 Professional Acne Brand”); May 19, 2024 Nonfinal Office Action, TSDR 6 (Perricone MD); 25 (Dr. Barbara Sturm).

- Perricone MD, offering supplements and skincare products such as cleansers and moisturizers.⁹
- Dr. Barbara Sturm, offering supplements and “anti-aging serum.”¹⁰
- Murad, offering supplements and “retinol youth renewal serum.”¹¹
- Paula’s Choice Skincare, offering eye creams and dietary supplements.¹²
- Aime, offering supplements and skincare products including moisturizers, serums and cleansers.¹³
- Aramore, offering moisturizers and supplements.¹⁴
- Dime, offering moisturizers and supplements.¹⁵
- Jane Iredale, offering moisturizer and supplements.¹⁶
- Osmosis, offering cleanser and supplements.¹⁷
- Tula Skincare, offering moisturizers and supplements.¹⁸
- Face Reality, offering creams and supplements.¹⁹
- Foundation Skincare, offering creams, lotions and supplements.²⁰

⁹ May 19, 2024 Nonfinal Office Action, TSDR 6-23.

¹⁰ *Id.* at 25-26.

¹¹ *Id.* at 27-28.

¹² August 20, 2024 Final Office Action, TSDR 7-8, 25.

¹³ *Id.* at 10-16. We note that this website is based in Paris and prices are shown in euros, but the website screenshots made of record are in English and the company offers international shipping. Applicant does not object to consideration of the Aime website. We therefore consider this website as additional evidence of the relatedness of the goods. *In re Odd Sox LLC*, Ser. No. 86297488, 2019 TTAB LEXIS 346, at *15 (TTAB 2019) (information “originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark” depending on the circumstances) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 969 (Fed. Cir. 2007)).

¹⁴ August 20, 2024 Final Office Action, TSDR 17-18.

¹⁵ *Id.* at 19-20.

¹⁶ *Id.* at 21-22.

¹⁷ *Id.* at 23-24.

¹⁸ *Id.* at 26-27.

¹⁹ February 22, 2025 Denial of Request for Reconsideration, TSDR 5-8.

²⁰ *Id.* at 12-13.

- Augustinus Bader, offering creams and supplements.²¹
- Codex Labs, offering face moisturizers and supplements.²²
- Permanence Skincare, offering creams and supplements.²³
- Moon Juice, offering creams and supplements.²⁴

The Examining Attorney also made of record evidence showing that the following third parties offer both skincare preparations and nutritional supplements under the same mark, with both products being offered for sale on the same third-party website:

- Nue-branded blemish treatments, serums and moisturizers and supplements offered on Sephora website.²⁵
- Grande Cosmetics-branded eye cream and supplements offered on Ulta website.²⁶
- 27 Rosiers-branded cream and supplements offered on Bergdorf Goodman website.²⁷
- Lalais-branded serum and supplements offered on Neiman Marcus website.²⁸
- Belle Nubian-branded cream and supplements offered on Nordstrom website.²⁹

We agree with the Examining Attorney that this evidence shows that Applicant's goods are related to Registrant's goods because consumers may encounter companies offering both non-medicated skincare preparations and nutritional supplements

²¹ *Id.* at 15-16.

²² *Id.* at 18-24.

²³ *Id.* at 26-33.

²⁴ *Id.* at 105-14.

²⁵ *Id.* at 72-73.

²⁶ *Id.* at 99, 102-03.

²⁷ *Id.* at 117-18.

²⁸ *Id.* at 119-21.

²⁹ *Id.* at 122-23.

under the same mark. *See, e.g., 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”); *In re Davey Prods. Pty Ltd.*, Ser. No. 77029776, 2009 TTAB LEXIS 524, at *15 (TTAB 2009) (third-party website evidence shows that the applicant’s and registrant’s products “can be manufactured and sold by a single source”).

The Examining Attorney also made of record sixteen subsisting use-based third-party registrations showing that the same entity has registered a single mark for both non-medicated skincare preparations and nutritional supplements.³⁰ This evidence supports a finding that Applicant’s “professional non-medicated skincare preparations” are related to the “nutritional supplements” identified in the Cited Registration for likelihood of confusion purposes. *See, e.g., In re Davey Prods.*, 2009 TTAB LEXIS 524, at *16 (while not evidence that the marks have been used or that the public is familiar with them, third-party use-based registrations including both applicant’s and registrant’s goods can show “that the goods listed therein are of a kind which may emanate from a single source under a single mark”); *see also In re Albert Trostel & Sons Co.*, Ser. No. 74186695, 1993 TTAB LEXIS 36, at *7 (TTAB 1993).

³⁰ These registrations are for the following marks: BIOFULLERENE (Reg. 7340574); CHRISTOPHER ARDANT (Reg. 6420308); SONIAGENIX X SONIAGENIX.COM & design (Reg. 7655517); WELLGRADE (Reg. 7448634); PARTNER.CO (Reg. 7573349); MBI NUTRACEUTICALS & design (Reg. 7352621); LALAIS (Reg. 6866632); BE MAVIC (Reg. 7436538); PLUSH PASSION (Reg. 7575740); CHOZEN ROOTZ (Reg. 7044667); ROOH (Reg. 7688148); ICING ON THE FACE (Reg. 5657527); DR.WU (Reg. 6016656); AEGABE & design (Reg. 7124396); REAL HEALTH. REAL BEAUTY. (Reg. 7477687); AQUALLE (Reg. 7685607) and PURE CRAFTED (Reg. 7290906). *Id.* at 35-68.

Despite this evidence, Applicant argues that the goods are unrelated due to inherent differences in their nature and function. According to Applicant:

Skincare preparations are topical products applied to the skin to enhance external appearance, addressing concerns like hydration or anti-aging. Nutritional supplements are ingestible products consumed to support internal health through nutrients. These goods serve non-overlapping functions—one aesthetic, the other physiological—rendering source confusion implausible.”³¹

The record evidence, however, dispels this notion and firmly supports a finding that Applicant’s skincare preparations and Registrant’s broadly-worded “nutritional supplements” are related. As detailed above, the evidence includes multiple examples of brands offering both skincare products and supplements, with the latter often promoted specifically for their potential benefits to the skin. Examples include:

- Perricone MD offers “Nutriceuticals Skin Clear” dietary supplement, “[a]n advanced and comprehensive nutritional supplement that works from the inside out to support healthy skin.”³²
- Aramore offers supplement that “supports the healthy functioning of 8 biological pathways of skin aging, to slow down the aging process and regenerate skin from within.”³³
- Dime offers “Microbiome Skin Supplement” to “Reveal your radiant glow from the inside out.”³⁴
- Jane Iredale offers “Skincare Supplements” to “nourish skin at its deepest level with vitamin-rich, all-natural daily skincare supplements.”³⁵

³¹ 6 TTABVUE 13.

³² May 19, 2024 Nonfinal Office Action, TSDR 7.

³³ August 20, 2024 Final Office Action, TSDR 18.

³⁴ *Id.* at 20.

³⁵ *Id.* at 22.

- Paula’s Choice offers supplement product that “promotes soft, hydrated, healthier skin from the inside out with a powerful blend of nourishing ingredients that support its natural collagen.”³⁶

Several of the other supplements for which evidence was made of record have the word “skin” in their names, signaling that the goods are being promoted for their effects on the skin. Examples include: Face Reality (“Clear Skin” supplements),³⁷ NUE (“Skin Hydrator” supplements)³⁸ and Lalais (“the Skin Perfecting Complex” supplements).³⁹

Such evidence supports a finding that consumers seek both Applicant’s and Registrant’s goods for the same purpose, to improve and care for their skin. Indeed, at least two of the companies that offer skincare preparations and nutritional supplements promote the goods for use as part of a coordinated regimen of skincare,⁴⁰ providing further support for a finding that the goods are complementary and related. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567 (Fed. Cir. 1984) (noting that bread and cheese are often used in combination and “[s]uch complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion”); *In re Ox Paperboard*, 2020 TTAB LEXIS 266,

³⁶ *Id.* at 25.

³⁷ February 22, 2025 Denial of Reconsideration, TSDR 7.

³⁸ *Id.* at 72.

³⁹ *Id.* at 119.

⁴⁰ May 19, 2024 Nonfinal Office Action, TSDR 7 (“Perricone MD takes holistic approach to promote healthy-looking skin and body” including diet as well as “advanced topical skincare and nutritional supplements”); 28 (Stress Less Supplement “[c]omplements the results of your Murad supplements and skincare regimen by improving hydration and stress levels—2 key factors for health—within just 1 bottle”).

at *17-18 (evidence showed that applicant's paperboard products and registrant's corrugated containers were used together to pack items for shipment and thus were complementary); *L'Oreal S.A.*, 2012 TTAB LEXIS 77, at *25 (evidence of companies that marketed cosmetics and beverages under the same mark and that aloe vera is commonly used as an ingredient in cosmetic and personal care products showed "the growing relationship between 'inner health' products (e.g., beverages and nutritional supplements) and 'outer beauty' products (e.g., cosmetics and personal care products)").

Turning to the channels of trade and classes of consumers, Applicant argues that

Applicant's skincare preparations are sold through specialized beauty retailers, dermatologists, and estheticians, targeting consumers seeking targeted aesthetic solutions. Nutritional supplements are distributed through health food stores, pharmacies, and wellness practitioners, catering to health-conscious buyers. These segregated channels ensure that consumers encounter the goods in contexts that reinforce their distinct purposes. ... The Examiner's failure to provide evidence of overlapping retail environments is fatal to the refusal.⁴¹

Applicant cites no evidence in support of these arguments, which again contradict the record in this case.

"In the absence of meaningful limitations in either the application or the cited registration[]," we must presume that "the goods travel through all usual channels of trade and are offered to all normal potential purchasers." *In re i.am.symbolic*, 866 F.3d at 1327. Because neither the Application nor the Cited Registration is limited,

⁴¹ 6 TTABVUE 14.

we find that the relevant consumers are ordinary purchasers of “professional non-medicated skincare preparations” and “nutritional supplements,” respectively. The evidence shows that the involved goods are offered to consumers seeking products to help improve their skin, on the same websites. Some of those websites are for sellers that fall squarely within Applicant’s asserted trade channels of “specialized beauty retailers” (e.g., Sephora, Ulta) and “estheticians” (e.g., Dr. Barbara Sturm, Augustinus Bader).⁴²

Contrary to Applicant’s unsupported arguments, the Examining Attorney made of record extensive evidence of overlapping retail environments, supporting a finding that the trade channels and classes of consumers for Applicant’s and Registrant’s goods are similar and overlapping. *See, e.g., In re Charger Ventures*, 64 F.4th at 1382 (evidence that third parties are known to offer the services of both applicant and registrant under the same mark and, often, on the same website supported finding that services and channels of trade were similar); *In re Davey Prods.*, 2009 TTAB LEXIS 524, at *18-19 (website evidence of third parties offering goods of applicant and registrant showed same or overlapping channels of trade and purchasers).

The second and third *DuPont* factors weigh in favor of a likelihood of confusion.

C. Sophistication of Consumers and Care in Purchasing

Under the fourth *DuPont* factor, we consider “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.”

⁴² May 19, 2024 Nonfinal Office Action, TSDR 25 (Dr. Barbara Sturm website invites visitors to book a treatment); February 22, 2025 Denial of Reconsideration, TSDR 15 (Augustinus Bader website does the same).

DuPont, 476 F.2d at 1361. “Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1376 (citation omitted); *see also In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985) (because only sophisticated purchasers exercising great care would purchase the goods, there was no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED).

Applicant argues that the consumers of the involved goods “are highly sophisticated, exercising significant care in their purchases,” which minimizes the risk of confusion.⁴³ Neither Applicant’s “professional non-medicated skincare preparations” nor Registrant’s “nutritional supplements” is limited by type, grade or price of the goods, or by class of consumer or channel of trade. Thus, in assessing likelihood of confusion, we must consider all potential purchasers of the goods, including ordinary consumers. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014). Applicant offers no evidence that ordinary consumers of the goods are highly sophisticated or use significant care when purchasing, and the evidence described above shows that the goods are offered to the general consuming public through channels including the websites of manufacturers, beauty retailers, and department stores. Although consumers may exercise some care when buying goods that will be applied to the skin or ingested for enhanced nutrition, there is evidence that such goods can be offered at relatively low prices and under

⁴³ 6 TTABVUE 15.

circumstances that can encourage buying on impulse.⁴⁴ Ordinary consumers of both Applicant's and Registrant's identified goods may exercise different degrees of care in purchasing the goods, and we "must make our determination based on the least sophisticated consumer." *Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, Can. No. 92079409, 2024 TTAB LEXIS 289, at *14 (TTAB 2024) (citing *Stone Lion Cap. Partners*, 746 F.3d at 1325); accord *In re Samsung Display Co.*, Ser. No. 90502617, 2024 TTAB LEXIS 258, at *22 (TTAB 2024) ("When the relevant consumer includes both professionals and the general public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser.").

We have considered the cases cited by Applicant, but find them inapposite. In *Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp.*, 954 F.2d 713, 718-19 (Fed. Cir. 1992), unlike this case, the goods and services descriptions and evidence showed that, to the extent there was any overlap in purchasers, they were sophisticated and unlikely to be confused as to source. Similarly, in *Coach Servs.*, the identified test preparation materials supported a finding that "educational professionals are likely to exercise a high level of care in making purchasing decisions." *Coach Servs.*, 668 F.3d at 1371. Here the Examining Attorney properly considered the least sophisticated potential consumers as well as the settled principle that even "careful or sophisticated purchasers are not immune from source

⁴⁴ See, e.g., May 19, 2024 Nonfinal Office Action, TSDR 6-24 (Perricone MD website lists shave cream starting at \$12 and offers promotions and "quick buy" options for skincare and supplement products); February 22, 2025 Denial of Reconsideration, TSDR 89-90 (listing gummy supplements priced at \$13.99); 12-14 (Foundation Skincare offering free shipping and percent off purchase of multiple items).

confusion.” *In re Charger Ventures*, 64 F.4th at 1383; *In re Research & Trading Corp.*, 793 F.2d 1276, 1279 (Fed. Cir. 1986) (“That the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods.”).

The fourth *DuPont* factor is neutral in our analysis.

D. Additional *DuPont* Factors

Applicant closes its arguments by contending that additional *DuPont* factors strongly weigh in its favor. Applicant first states that there is no evidence of actual confusion, despite the marks’ alleged coexistence in the marketplace.⁴⁵ This implicates the seventh *DuPont* factor, “[t]he nature and extent of any actual confusion,” and the eighth *DuPont* factor, “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 476 F.2d at 1361. “[A] showing of actual confusion is not necessary to establish a likelihood of confusion,” *Herbko Int’l v. Kappa Books*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) (citation omitted), and in an ex parte appeal such as this, where the registrant is not a party, the lack of such evidence carries little weight. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003). Moreover, for the absence of confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred. *Citigroup, Inc. v. Cap. City Bank Grp., Inc.*, Opp. No. 91177415, 2010 TTAB LEXIS 40, at *50 (TTAB 2010), *aff’d*, 637 F.3d 1344 (2011).

⁴⁵ 6 TTABVUE 15-16; *see also* 9 TTABVUE 11-12.

Here, the Application is based on intent to use and Applicant has made of record no evidence of concurrent use of the respective marks. The seventh and eighth *DuPont* factors are neutral.

Applicant also contends that “the term ‘BEAUTY’ is descriptive and disclaimed in Applicant’s mark, reflecting its widespread use in the beauty industry [which] weakens the Cited Mark’s scope of protection and reduces the likelihood of confusion.”⁴⁶ To the extent Applicant seeks to invoke the sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods,” 476 F.2d at 1361, Applicant offered no evidence of similar marks that would lessen the scope of protection presumptively accorded to the Cited Mark so this factor does not favor Applicant. *See* Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 TTAB LEXIS 14, at *27 (TTAB 2023) (opposer’s pleaded mark “is registered on the Principal Register without a claim of acquired distinctiveness and so is treated as inherently distinctive”).

We have considered all of Applicant’s arguments purportedly addressed to additional *DuPont* factors but do not find that any factors weigh against a likelihood of confusion in this case.

II. Balancing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there is evidence and argument and “explain the results of that weighing” and “the weight [we] assigned to the relevant factors.” *In re Charger Ventures*, 65

⁴⁶ 6 TTABVUE 15-16; 9 TTABVUE 12.

F.4th at 1384. Comparing Applicant's mark ELEMENTAL BEAUTY with the Cited Mark BEAUTY IS ELEMENTAL, we find that the marks are similar, with the first *DuPont* factor weighing in favor of a likelihood of confusion. The Examining Attorney made of record extensive evidence supporting a finding that Applicant's "professional non-medicated skincare preparations" are related and complementary to the "nutritional supplements" of the Cited Registration, and that the goods travel in similar and overlapping channels to similar and overlapping consumers, with the second and third *DuPont* factors also weighing in favor of a likelihood of confusion. The fourth, seventh and eighth *DuPont* factors are neutral in our analysis. No *DuPont* factor weighs against a likelihood of confusion.

Balancing the factors, we conclude that confusion is likely between Applicant's mark and Registrant's mark for their respective identified goods.

Decision:

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