

This Opinion is not a
Precedent of the TTAB

Mailed: August 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lemon Inc.

Serial No. 98247563

Kevin M. Bovard and Gabriel Mitchell of Baker & Hostetler LLP
for Lemon Inc.

Alexandria Bryant, Trademark Examining Attorney, Law Office 113,
Myriah Habeeb, Managing Attorney.

Before Goodman, Lebow and Brock,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Lemon Inc. (“Applicant”) seeks registration on the Principal Register of the mark

CRYSTAL OF ATLAN (in standard characters) for

Downloadable computer game software; downloadable
video game software; downloadable game software
applications for personal computers, mobile phones, and
handheld computers in International Class 9;

Entertainment services, namely, providing online
computer games; entertainment services, namely,
providing online video games via a global communications
network; providing online computer games for personal
computers, mobile phones, and handheld computers in
International Class 41; and

Providing online non-downloadable game software;
providing temporary use of non-downloadable game
software via a website in International Class 42.¹

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), for all identified goods and services, on the ground that Applicant's mark is likely to cause confusion with the Principal Register mark HEROES OF ATLAN for the following goods and services: "Downloadable computer game programs; downloadable computer game software via a global computer network and wireless device" in International Class 9 and "Game services provided on-line from a computer network, namely, providing on-line computer games" in International Class 41.²

When the refusal was made final, Applicant appealed and requested reconsideration, which the Examining Attorney denied. Applicant then requested and was granted a remand to submit additional evidence, but the Examining Attorney maintained the refusal. The appeal was then resumed.

We affirm the refusal to register.

¹ Application Serial No. 98247563 was filed on October 31, 2023, based upon Applicant's assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

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 10 TTABVUE; Registrant's brief is at 12 TTABVUE.

² Registration No. 4809665, issued September 8, 2015, Section 8 accepted and Section 15 acknowledged.

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 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 [or services] and differences in the marks.”). These factors, and others, are discussed below.

As noted above, the refusal covers all of Applicant’s identified goods and services. “Because each class in Applicant’s multi-class application is, in effect, a separate

application, we consider each class separately, and determine whether [the Examining Attorney] has shown a likelihood of confusion with respect to each.” *In re OSF Healthcare Sys.*, 2023 TTAB LEXIS 353, at *9-10 (TTAB 2023) (“On the appeal of a refusal to register directed to all classes in a multi-class application such as this one, examining attorneys and applicants should facilitate the Board’s review by discussing the evidence of relatedness on a class-by-class basis.”).

A. Similarity or Dissimilarity of the Goods and Services

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods [or services] as described in an application or registration.” *DuPont*, 476 F.2d at 1361.

In determining the similarity or dissimilarity of the goods or services, we must focus on the goods or services as they are identified in the involved 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 or services 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).

Registrant’s Class 9 goods include “downloadable computer game programs” and Applicant’s Class 9 goods include “downloadable computer game software.” The Examining Attorney’s dictionary evidence shows that “computer game software” and

“computer game programs” are equivalent terms.³ In addition, Applicant’s “downloadable game software applications for personal computers, mobile phones, and handheld computers” are encompassed by Registrant’s more broadly identified “downloadable computer game programs.” *In re Hughes Furniture Indus.*, 2015 TTAB LEXIS 65, at *10 (TTAB 2015) (applicant’s broadly worded identification of “furniture” necessarily encompasses registrant’s narrowly identified “residential and commercial furniture”). Therefore, the Class 9 goods in the application and cited registration are legally identical.

Both Applicant’s and Registrant’s identifications for Class 41 services cover “providing online computer games,” which are identical. Those services of Registrant are also broad enough to encompass Applicant’s services of “providing online video games via a global communications network; providing online computer games for personal computers, mobile phones, and handheld computers.” The Class 41 services in the application and cited registration are legally identical.

Lastly, Applicant’s Class 42 services include “Providing online non-downloadable game software” and Registrant’s Class 41 services are “game services provided on-line from a computer network, namely, providing on-line computer games.” The Examining Attorney provided third-party registrations covering both downloadable and non-downloadable online software for playing games. October 17, 2024 Denial of

³ The Examining Attorney provided a definition of “software” which is defined as a “computer program.” February 23, 2024 Office Action at TSDR 5 (Dictionary.com). The Examining Attorney points out that Applicant did not address the relatedness of the goods and services in its brief. 12 TTABVUE 12.

Reconsideration at TSDR 7-27. Registrant's provision of on-line computer games is broad enough to encompass non-downloadable online game software. Therefore, we find Applicant's Class 42 services to be legally identical to Registrant's Class 41 services.

In sum, Applicant's and Registrant's identified goods and services are identical or legally identical. The second *DuPont* factor favors a finding of likelihood of confusion.

B. Trade Channels, Classes of Consumers, and Conditions of Sale

We consider the "similarity or dissimilarity of established, likely-to-continue trade channels" and the "conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. There are no restrictions in Applicant's and Registrant's identifications of goods and services as to the channels of trade or classes of consumer. The classes of consumers for Applicant's and Registrant's goods and services are the general public, particularly those who play video games.

Given the legal identity of the Class 9 goods and Class 41 and 42 services, we presume the channels of trade and classes of consumers will be the same as well. *In re Viterro Inc.*, 671 F.3d 1358, 1362, (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *see also Genesco Inc. v. Martz*, 2003 TTAB LEXIS 123, at *28 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these

clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.”).

We find that the *DuPont* factors considering trade channels and classes of consumers support a finding of likelihood of confusion.

Turning to conditions of sale, neither Applicant’s nor Registrant’s goods or services are restricted to any particular price point or consumer. It appears from the record that Applicant’s goods are free to download as an app. February 23, 2024 Office Action at TSDR 3.

When the goods and services 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).

The Examining Attorney points out that consumers of video games, “sophisticated or not, are accustomed to seeing shared novel wording appearing in related games,” (see discussion *infra*) and that because Applicant’s goods are free to download, they could be purchased on impulse, with a lesser standard of purchaser care.” 12 TTABVUE 9.

Applicant disagrees, arguing that “consumers, especially the sophisticated video gamer consumers at issue here, would recognize the differences in the marks and their sources, making confusion highly unlikely.” 10 TTABVUE 5, 8. But this unsupported contention is 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.”).

Because there is no evidence as to purchasing conditions, we find the fourth *DuPont* factor to be neutral.

C. Third-party uses and Registrations

The sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods [or services],” *DuPont*, 476 F.2d at 1361, “is a measure of the extent to which other marks weaken the assessed mark.” *Spireon Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005)). There are two types of strength: conceptual and commercial.⁴ *Id.* (citing *In re Chippendales USA, Inc.*, 622

⁴ The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin, i.e., its fame or commercial strength. *DuPont*, 476 F.2d at 1361. In an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 2016 TTAB LEXIS 470, at *26 (TTAB 2016). As is normally the case in ex parte proceedings, the fifth *DuPont* factor is neutral. *See In re Thomas*, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

F.3d 1346, 1353-54 (Fed. Cir. 2010)). The strength of the cited mark affects the scope of protection to which a mark is entitled. *Bell's Brewery, Inc. v. Innovation Brewing*, 2017 TTAB LEXIS 452, at *20 (TTAB 2017).

The cited mark is registered on the Principal Register without a claim of acquired distinctiveness and is therefore treated as inherently distinctive. *See New Era Cap Co. v. Pro Era, LLC*, 2020 TTAB LEXIS 199, at *29 (TTAB 2020) (“Opposer’s mark is inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.”). Nevertheless, we may consider whether Registrant’s mark is weak as a source indicator during the course of the *DuPont* analysis. *See In re Fat Boys Water Sports LLC*, 2016 TTAB LEXIS 150, at *23 (TTAB 2016) (“we find that Registrant’s mark, although presumptively distinctive, is nevertheless weak as a source indicator”).

Evidence of third-party use for similar goods or services bears on the strength or weakness of a mark. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015) (citing *Palm Bay Imps.*, 396 F.3d at 1373). Evidence of third-party registrations for marks “on similar goods [or services] can bear on a mark’s conceptual strength.” *Spireon*, 71 F.4th 1363 (citing *Juice Generation*, 794 F.3d at 1339). Third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 794 F.3d at 1339; *see also Jack*

Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U., 797 F.3d 1363, 1374 (Fed. Cir. 2015).

Applicant has not provided evidence of third-party use but has provided ten third-party registrations (two owned by the same entity) that incorporate the term ATLANTIS. December 16, 2024 Request for Remand, 6 TTABVUE. Nine of the registrations cover downloadable computer game software in Class 9 (with two also covering online computer game services (downloadable or non-downloadable) in Class 41 and Class 42); one of the third-party registrations covers online computer game services. Most of the registrations identify the type of game software as software for games of chance.⁵

Applicant argues that these third-party registrations co-exist and reflect that ATLANTIS is weak for gaming goods and services, which the Examining Attorney herself has stated. 10 TTABVUE 9-10.

However, these registrations are for a different term ATLANTIS, rather than ATLAN, and there is nothing in the record that shows that ATLAN is a shortened form for ATLANTIS. Furthermore, the Examining Attorney's negative dictionary evidence showed no entries for ATLAN. February 23, 2024 Office Action at TSDR 4. The Examining Attorney argues that "[g]iven the unique nature of the wording ATLAN, evidence showing coexisting marks for the common matter ATLANTIS is not dispositive of whether ATLAN marks can coexist" and Applicant's argument of

⁵ The identifications of goods and services of Applicant's and Registrant's legally identical goods and services is broad enough to encompass computer game software for games of chance.

weakness of ATLAN is without evidentiary support since there is only one registration that includes the term ATLAN, which is the cited mark. 12 TTABVue 8-9.

Because none of the third-party registrations contain the term ATLAN, we find this evidence to have little probative value in showing that ATLAN is weak. *See In re Inn at St. John's, LLC*, 2018 TTAB LEXIS 170, at *12 (TTAB 2018) (discounting probative value of third-party registrations “contain[ing] the non-identical term ‘Fifth’” instead of “five” in showing that the cited registered mark 5IVESTEAK was weak); *Cook's Pest Control, Inc. v. Sanitas Pest Control Corp.*, 1977 TTAB LEXIS 164, at *21-22 (TTAB 1977) (third-party registrations that contain different design elements and do not include the word marks at issue are of little probative value).

We find that Applicant's evidence does not contract the strength of Registrant's mark, conceptually. Accordingly, the number and nature of similar marks in use in connection with computer games (downloadable, online, and non-downloadable online) is a neutral factor.

D. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imps.*, 396 F.3d at 1371 (citing *DuPont*, 476 F.2d at 1361). 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).

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 or services offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 2014 TTAB LEXIS 166, at *17 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). Additionally, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

Applicant’s mark is CRYSTAL OF ATLAN. The cited mark is HEROES OF ATLAN.

In comparing the two marks, the obvious similarity is that both marks contain the words OF ATLAN. On the other hand, the marks have visual and phonetic differences due to the presence of the initial terms HEROES in Registrant’s mark and CRYSTAL in Applicant’s mark.

As to connotation of the terms CRYSTAL and HEROES, Applicant references the following dictionary definitions: “crystal” is defined as “quartz that is transparent or nearly so and that is either colorless or slightly tinged,” while “heroes” is defined as “an illustrious warrior; a person admired for achievements and noble qualities.” May

23, 2024 Response to Office Action at 7, 14 (MERRIAM-WEBSTER DICTIONARY, merriam-webster.com, definitions for “crystal” and “heroes”).

Applicant argues that the marks are dissimilar because the first term in each mark, CRYSTAL and HEROES respectively, differ in sound and appearance, and each has a different meaning. 10 TTABVUE 5. Applicant argues that “[t]hese terms have no overlap in meaning and create a different overall commercial impression for consumers as to what kind of game is being provided.” *Id.*

As to the terms OF ATLAN in Applicant’s mark, the Examining Attorney provided a webpage from the Google Play app store describing Applicant’s game. It states that ATLAN is a “a floating world where magic and technology coexist” and that ATLAN is a “city of adventurers.” February 23, 2024 Office Action at TSDR 3. And as indicated, the Examining Attorney also provided a MERRIAM-WEBSTER Dictionary page showing that ATLAN is not a word in the dictionary. February 23, 2024 Office Action at TSDR 4. Thus, ATLAN in both marks, for identical goods and services, could connote a mythical place or location and there is nothing in the record indicating that the connotation could be different for either mark. *See In re Embiid*, 2021 TTAB LEXIS 168, at *28 (TTAB 2021) (no evidence in the record to find that TRUST THE PROCESS had a different connotation when used with shoes or shirts and sweatshirts).

As to commercial impression, the Examining Attorney provided evidence that the gaming industry has a practice of naming franchise or series games with variations on similar wording. In particular, various game franchises or game series were shown

in the evidence using similar wording in their titles, often with the common word the lead word, but sometimes not.⁶ June 20, 2024 Office Action at TSDR 2-14; October 17, 2024 Denial of Reconsideration at TSDR 2-6. The Examining attorney asserts that “the gaming industry has a practice of creating spinoffs, sequels, and prequels for goods of the kind, specifically identifying games as a part of a single franchise by placing shared unique wording in the title of related game.” 12 TTABVUE 6-7.

Applicant criticizes this evidence as “cherry-picked” and argues that most of the evidence shows that “the first term of the game, or the full name of the first game, is the dominant portion that is then carried throughout the series in order for consumers to recognize the relationship between the related games,” with eleven of seven examples a reflection of this practice. 10 TTABVUE 7. Applicant points out that its mark and the cited mark are not reflective of the industry practice, as the first terms in each mark differ. *Id.* Applicant argues there is no rule that identical terms in a mark must result in confusion, particularly where the first term differs. *Id.*

⁶ For example: The Like a Dragon franchise including Yakuza Like a Dragon and Like a Dragon Infinite Wealth; The Final Fantasy franchise including Crisis Core: Final Fantasy VII and Final Fantasy XVI The Rising Tide; The Wolfenstein franchise including Wolfenstein 3D, Wolfenstein: The Old Blood, Return to Castle Wolfenstein; The Tomb Raider franchise featuring Tomb Raider: Definitive Edition, Rise of the Tomb Raider, Shadow of the Tomb Raider; The Legend of Zelda featuring Hyrule Warriors and Cadence of Hyrule; The Mario franchise featuring Mario Tennis, New Super Mario Bros., Super Mario Party; The Metroid franchise featuring Metroid, Super Metroid, Metroid Dread; The Warcraft franchise featuring World of Warcraft; Heathstone Heroes of Warcraft; Peggle World of Warcraft edition; The Xanadu franchise featuring Xanadu, Revival Xanadu, Tokyo Xanadu New Project; The Just Dance franchise featuring Just Dance Wii, Yo-Kai Watch Dance Just Dance Special Version; The Tales of franchise featuring Tales of Symphonia, Tales of Luminaria, Tales of Arise, Tales of Destiny, etc. June 20, 2024 Office Action at TSDR 2-14; October 17, 2024 Denial of Reconsideration at TSDR 2-6. Applicant provided additional references (names of game titles) for the Final Fantasy and Yakuza game franchises. December 16, 2024 Request for Remand 6 TTABVUE.

Although it is true that many of the examples show that game series frequently do use the name of the game at the beginning of the title for a game that follows in a series, the Examining Attorney also provided examples where this was not the case. The evidence provided by the Examining Attorney is probative, regardless of the position of the common term in the game titles, because it shows that game franchises will repeat the common term on new game titles to show consumers it is part of the series.

Applicant also points to its third-party registration evidence as evidence of a lack of confusion because it reflects that game titles that share one term can be owned by different entities and coexist. 10 TTABVUE 7. However, “[t]he existence of these registrations is not evidence of what happens in the marketplace or that customers are familiar with them.” *AMF Inc. v. Am. Leisure Prods.*, 474 F.2d 1403, 1406 (CCPA 1973).

Consumer confusion has been held likely for marks that do not sound or look alike but that convey the same idea, stimulate the same mental reaction, or may have the same overall meaning. Both marks have quite similar connotations in their reference to ATLAN as the source of either the CRYSTALS or HEROES in the marks. *See In re Dare Foods Inc.*, 2022 TTAB LEXIS 92, at *12 (TTAB 2022) (connotations of the marks, RAINCOAST DIP and RAINCOAST TRADING, “while not identical, are nonetheless quite similar inasmuch as both suggest goods emanating from an unspecified ‘rain coast.’”).

Given the practice in the gaming industry of adding distinct wording to shared matter to identify games within a franchise or series, the use of ATLAN in both marks is likely to lead consumers to assume HEROES OF ATLAN and CRYSTALS OF ATLAN are sister games in the ATLAN franchise emanating from a common source.

See In re Dare Foods Inc., 2022 TTAB LEXIS 92, at *13 (for RAINCOAST DIP and RAINCOAST TRADING marks, “consumers encountering these marks could mistakenly believe the former is a variation on the registered mark used to identify a particular line of snack food dips, but nonetheless emanating from a common source”).

We find that Applicant’s and Registrant’s marks create similar commercial impressions. Purchasers familiar with Registrant’s mark HEROES OF ATLAN, upon encountering identical or similar goods or services marketed under Applicant’s mark which includes the same component OF ATLAN, are likely to assume that there is a source or other connection between the respective goods or services. In particular, “consumers encountering these marks could mistakenly believe [applicant’s mark] is a variation on the registered mark used to identify a particular line ..., but nonetheless emanating from a common source.” *In re Dare Foods Inc.*, 2022 TTAB LEXIS 92, at *13.

We find that in their entirety, the points of distinction in the marks “do not sufficiently diminish the strong similarities in connotation and overall commercial impression engendered by these two marks.” *In re Dare Foods Inc.*, 2022 TTAB LEXIS 92, at *12-13. *See also See P&G Co. v. Conway*, 419 F.2d 1332, 1335 (CCPA 1970) (considering the marks on the basis of the conditions and circumstances surrounding the purchase of goods in the marketplace, MISTER CLEAN and MISTER STAIN are similar for cleaning products); *Downtowner Corp. v. Uptowner Inns, Inc.*, 1973 TTAB LEXIS 68, at *17 (TTAB 1973) (UPTOWNER and DOWNTOWNER similar for motor

lodge services). Additionally, the identity of the goods and services reduces the degree of similarity between the marks necessary to support a conclusion of likely confusion. We find the marks are similar in their entirety, and this similarity supports a finding of likelihood of confusion.

II. Conclusion

The final step is to weigh the *DuPont* factors for which there is evidence and argument. *In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023). The goods and services are identical and legally identical; the trade channels and classes of consumers overlap. The marks are similar in commercial impression and Applicant has not shown conceptual weakness. The first, second and third factors weigh in favor of likelihood of confusion, with the second factor weighing heavily so. The fourth and sixth *DuPont* factors are neutral. Although Applicant argues that confusion is only a theoretical possibility, 10 TTABVue 10, given the weight of the relevant *DuPont* factors, we find confusion likely.

Decision: The Section 2(d) refusal to register Applicant's mark CRYSTAL OF ATLANT is affirmed.