

This Opinion is Not a
Precedent of the TTAB

Mailed: August 22, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re VIP Fashion, Inc.

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Serial No. 98276220

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Sunny S. Nassim, of Jacobson, Russell, Saltz, Nassim, De la Torre LLP,
for VIP Fashion, Inc.

Christine Nishigaya, Trademark Examining Attorney, Law Office 132,
Brandon Marsh, Managing Attorney

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Before Larkin, Cohen, and Casagrande, Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

VIP Fashion, Inc. (Applicant) seeks registration on the Principal Register of the mark OGGO (in standard characters) for: “Clothing, namely, tops, bottoms, sweaters, shirts, sweatshirts, pants, shorts, jackets, coats, vests, hats, scarves, gloves, belts, ties, underwear, socks, shoes, sneakers, boots, sleepwear, robes, suits, in International Class 25.¹ The USPTO Trademark Examining Attorney assigned to the file refused registration under Section 2(d), 15 U.S.C. § 1052(d), due to likelihood of

¹ The application was filed on November 17, 2023, under Section 1(b) of the Lanham Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s bona fide intent to use the marks in commerce.

confusion with the standard-character mark OGO, which is registered on the Principal Register for sunglasses, in International Class 9.²

After final refusal,³ Applicant simultaneously requested reconsideration and appealed.⁴ We suspended the appeal and remanded to the Examining Attorney so that she could consider the reconsideration request.⁵ After the request was denied,⁶ the appeal resumed.⁷ Both Applicant and the Examining Attorney filed briefs.⁸ The appeal is now ready for decision. For the reasons explained below, we affirm the refusal.

EVIDENTIARY ISSUE

There is a quick evidentiary issue before we assess the refusal. The Examining Attorney objects to a single-page screenshot of a webpage attached to Applicant's appeal brief.⁹ The Examining Attorney points to the Trademark Rule that the evidentiary record should be complete before appeal. *See* Trademark Rule 2.142(d),

² Reg. No. 3265168 issued on July 17, 2007 (combined §§ 8 & 15 Declaration accepted and acknowledged, respectively).

³ *See* Oct. 7, 2024, Final Office Action. Any citations to specific pages of prosecution filings will be to .pdf-format versions of the documents as downloaded from the USPTO's TSDR electronic trademark docketing system.

⁴ *See* Jan. 2, 2025, Request for Reconsideration; Notices of Appeal, 1 TTABVUE (both appeal files). References to the briefs and appeal record cite to the Board's TTABVUE electronic docket system. The number preceding "TTABVUE" represents the docket number assigned to the cited filing in TTABVUE and any number immediately following "TTABVUE" identifies the specifically-cited page(s), if any.

⁵ *See* 2 TTABVUE.

⁶ *See* Feb. 20, 2025, Denial of Reconsideration (also at 4 TTABVUE).

⁷ *See* 5 TTABVUE.

⁸ *See* 6 TTABVUE (Applicant's brief); 8 TTABVUE (Examining Attorney's brief).

⁹ *See* 8 TTABVUE 2.

37 C.F.R. § 2.142(d); *In re Medline Indus., Inc.*, No. 87680078 , 2020 WL 1485709, at *3 (TTAB 2020). The Examining Attorney is correct. If an applicant (or an examining attorney) wants to place more evidence in the record after an appeal is instituted, the proper procedure is to separately request suspension of the appeal and a remand for more prosecution. *See generally* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.02 (2025). We sustain the objection and will disregard the screenshot.

ANALYSIS

Section 2(d) of the Trademark Act prohibits registration of a mark that “so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d). We determine whether confusion is likely by analyzing all probative facts in evidence 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). *See, e.g., In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Though *du Pont* lists thirteen numbered factors (some with subparts), we generally address only those that are relevant and material to the case before us, *see, e.g., Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1241 (Fed. Cir. 2004); *Octocom Sys., Inc. v. Hou. Comput. Servs., Inc.*, 918 F.2d 937, 943 (Fed. Cir. 1990)—typically the factors that the parties address and on which there is relevant evidence in the record. *See, e.g., Sunkist Growers, Inc. v. Intrastate Distribs., Inc.*, 144 F.4th 1376, 1379 (Fed. Cir. 2025); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997).

We then weigh together our findings on these factors to determine if, on balance, they indicate that confusion is likely. *See, e.g., Charger Ventures*, 64 F.4th at 1381; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1319 (Fed. Cir. 2003).

A. Comparison of the marks

The first likelihood-of-confusion factor assesses “[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *du Pont*, 476 F.2d at 1361. This is always an important inquiry. *See, e.g., 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). “Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (citation omitted). “The proper test is ... whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1323 (Fed. Cir. 2017) (citation omitted); *see also Phillips Petroleum Co. v. Knox Indus. Corp.*, 277 F.2d 945, 947 (CCPA 1960) (“This issue is whether the marks are confusingly similar, not whether they are identical.”) (citation omitted).

In assessing the marks, we compare their “appearance, sound, connotation and commercial impression.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (citation omitted); *accord i.am.symbolic*, 866 F.3d at 1324. This factor supports the refusal “if the similarity in either form, spelling or sound alone is likely to cause confusion.” *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732

(CCPA 1968) (citation omitted); *see also Hancock v. Am. Steel & Wire Co.*, 203 F.2d 737, 740 (CCPA 1953) (“it is proper to consider [the marks’] appearance, sound and meaning ... but a combination of all three factors need not necessarily exist”) (cleaned up; citations omitted). We keep in mind that consumers must depend on their recollection of marks to which they’ve previously been exposed and that their memories are fallible. *See, e.g., St. Helena Hosp.*, 774 F.3d at 751; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981).

The Examining Attorney argues that the marks—OGGO (Applicant’s mark) and OGO (the mark in the cited registration)—are highly similar.¹⁰ Applicant does not contest this characterization, or even address this factor at all, thus tacitly conceding the point. *See, e.g., In re Morinaga Nyugyo K.K.*, No. 86338392, 2016 WL 5219811, at *2 (TTAB 2016); *see also Heritage Alliance v. Am. Policy Roundtable*, 133 F.4th 1063, 1066, 1071 (Fed. Cir. 2025) (acknowledging failure to address likelihood of confusion in brief to Board was tacit concession of that issue). Indeed, the marks look similar, the only difference being an extra G in the middle of Applicant’s mark. Neither term is a dictionary word¹¹ and, without any known meanings, there isn’t any difference in meaning. “There is no correct pronunciation of a trademark that is not a recognized word,” *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1331-32 (Fed. Cir. 2014) (citation omitted), and there is no other evidence in the record of how these marks are pronounced. On the record here, we agree with the Examining Attorney

¹⁰ *See* 8 TTABVUE 3-4.

¹¹ *See* Oct. 7, 2024, Final Office Action, at TSDR 7-12.

that the marks are highly similar. This will weigh in favor of a conclusion that confusion is likely when we do our final weighing of the relevant factors at the end.

B. Comparison of the goods

The second likelihood-of-confusion factor looks at “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *du Pont*, 476 F.2d at 1361. We compare the goods as they are set forth in the application and registration. *See, e.g., In re Detroit Athl. Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018); *i.am.symbolic*, 866 F.3d at 1325. “The relevant inquiry considers if the respective products are 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.” *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1363 (Fed. Cir. 2022) (cleaned up; citation omitted). “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.” *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (citation omitted); *In re Rsch. & Trading Corp.*, 793 F.2d 1276, 1278 (Fed. Cir. 1986) (“It is ... not necessary that the goods [or services] of the parties be identical in order to sustain a finding of likelihood of confusion.”) (citations omitted).

The Examining Attorney argues that the evidence shows that the goods are related.¹² One straightforward way to show that consumers perceive goods as related (in the trademark sense) is to show that other companies offer the goods identified in

¹² *See* 8 TTABVUE 4.

an application and those identified in a cited registration under the same mark. *See, e.g., Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024); *Detroit Athl. Co.*, 903 F.3d at 1306; *Hewlett-Packard*, 281 F.3d at 1267. Here, the Examining Attorney placed in the record evidence that four other companies do exactly that.¹³ Similar in effect is evidence that several third parties own active, use-based registrations for a single mark that covers products listed in the application and cited registration. *See, e.g., In re Country Oven, Inc.*, No. 87354443, 2019 WL 6170483, at *5 (TTAB 2019) (“As a general proposition, third-party registrations that cover goods and services from both the cited registration and an Applicant’s application are relevant to show that the goods and services are of a type that may emanate from a single source under one mark.” (citations omitted); *accord In re Halo Leather Ltd.*, 735 F. App’x 722, 727 (Fed. Cir. 2018). And there is plentiful evidence of such third-party registrations in the record here.¹⁴

Applicant argues that the respective goods are not identical.¹⁵ But likelihood of confusion does not depend on whether the goods are identical. *See, e.g., Dan Robbins*

¹³ *See* Feb. 20, 2025, Denial of Reconsideration, at TSDR 5-11 (GAP); *id.* at 12-26 (MADEWELL); *id.* at 28-59 (OAKLEY); *id.* at 62-69 (PRADA).

¹⁴ *See* June 25, 2024, Nonfinal Office Action, at TSDR 10 (Reg. No. 5720051); *id.* at 12 (Reg. No. 5439689); *id.* at 14 (Reg. No. 6634180); *id.* at 16-17 (Reg. No. 7321147); *id.* at 18-19 (Reg. No. 5507328); *id.* at 20-21 (Reg. No. 6628096); *id.* at 22 (Reg. No. 4573406); *id.* at 23-24 (Reg. No. 4993615); *see also* Oct. 7, 2024, Final Office Action, at TSDR 15 (Reg. No. 7428166); *id.* at 17-18 (Reg. No. 6839363); *id.* at 19-20 (Reg. No. 6152185); *id.* at 21-22 (Reg. No. 6981563); *id.* at 23-24 (Reg. No. 4250539); *id.* at 25-26 (Reg. No. 6336759); *id.* at 27-28 (Reg. No. 5571695); *id.* at 29-30 (Reg. No. 3116548); *id.* at 31-32 (Reg. No. 2550197); *id.* at 33-34 (Reg. No. 6873920); *id.* at (Reg. No. 5732597); *id.* at 37-38 (Reg. No. 5270670); *id.* at 39-40 (Reg. No. 7287431).

¹⁵ *See* 6 TTABVUE 9.

& Assocs., Inc. v. Questor Corp., 599 F.2d 1009, 1013 (CCPA 1979) (“The marks need not be used on directly competing goods, any relation likely to lead purchasers into assuming a common source being sufficient.”) (citation omitted). Where the evidence shows, as it does in this case, that others offer both types of goods under a single mark, that in turn shows that consumers will view those non-identical goods as related for trademark purposes, because they see them as types of goods that emanate from the same source. *See, e.g., Recot, Inc. v. Becton*, 214 F.3d 1322, 1328 (Fed. Cir. 2000); *Country Oven*, 2019 WL 6170483, at *5.

Applicant minimizes the evidence of record, characterizing the third parties who sell both kinds of goods as “large retailers.”¹⁶ To be sure, we have noted that, when the third-party relatedness evidence comes from “big box retail stores or online retailers selling a wide variety of goods,” as opposed to smaller or “specialty retailers,” the evidence can have somewhat less probative value. *See In re Ox Paperboard, LLC*, Ser. No. 87847482, 2020 WL 4530517, at *7 (TTAB 2020). But Applicant has provided us no evidence upon which we can assess whether that sort of discounting should apply to the third-party evidence in this case. This argument therefore does not move us.

Applicant also frames its arguments in terms of Class 9 being unrelated to Class 25. But which international class goods fall within is irrelevant. Those classes are there solely for administrative purposes related to international treaties and are “wholly irrelevant” to the likelihood-of-confusion analysis. *See, e.g., Jean Patou, Inc.*

¹⁶ *See* 6 TTABVUE 9.

v. Theon, Inc., 9 F.3d 971, 975 (Fed. Cir. 1993); *In re Knapp-Monarch Co.*, 296 F.2d 230, 231 (CCPA 1961).

On this record, we have no difficulty in determining on this record that the respective goods are related. In the final weighing, this will count in favor of refusing registration.

C. Comparison of the channels of trade and the classes of relevant customers

We next consider “[t]he similarity or dissimilarity of established, likely-to-continue trade channels” as well as “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *du Pont*, 476 F.2d at 1361. As with the comparison of the goods, we base our comparison of the trade channels and customers on what is set forth in the involved application and cited registration. *See, e.g., i.am.symbolic*, 866 F.3d at 1325. When, as in this case, the application’s and registration’s specifications of goods do not limit how the goods are sold or to whom, we presume that they are sold “in all normal trade channels to all the normal classes of purchasers.” *Detroit Athl.*, 903 F.3d at 1308 (citation omitted). That these nonidentical products are distributed in the “normal” way for each product, however, does not itself tell us whether one product’s “normal” channels and customers overlap with the other’s, but evidence we discussed above shows that at least four third-parties who make and sell sunglasses and clothing advertise and sell both types of goods together on their retail websites, like any general goods that people wear. So the evidence there is in the record shows that the trade channels and

customers for the goods in the application and cited registration overlap to at least some degree.

Applicant offers no evidence to the contrary. Applicant nevertheless insists that it “does not sell its goods to the general public,” instead selling “wholesale” only to retailers who “register with Applicant.”¹⁷ There are at least two problems with this argument.

First, Applicant did not put that limitation in its description of the goods. We base our registration decisions on what an applicant discloses the mark and goods to be, because that is what any issuing registration will say. *See, e.g., CBS Inc. v. Morrow*, 708 F.2d 1579, 1581 (Fed. Cir. 1983) (“The description of the goods in an application for registration is critical because any registration that issues will carry that description.”). When someone applies to register a trademark with the USPTO, the USPTO expects the applicant to accurately depict the mark, identify the goods or services in connection with which it’s used (or intended to be used), and disclose any meaningful limitations on the manner in which they are sold or to whom they’re sold. After all, the point of the Register is so that others can then rely on its accuracy in making decisions about the marks they use or intend to use, so as to avoid likely confusion with other existing marks. *See, e.g., In re Int’l Flavors & Fragrances, Inc.*, 183 F.3d 1361, 1368 (Fed. Cir. 1999) (“the mark, as registered, must accurately reflect the way it is used in commerce so that someone who searches the registry for the mark, or a similar mark, will locate the registered mark”); *Bongrain Int’l (Am.) Corp.*

¹⁷ 6 TTABVUE 9-10.

v. Delice de France, Inc., 811 F.2d 1479, 1485 (Fed. Cir. 1987) (“One of the policies sought to be implemented by the Act was to encourage the presence on the register of trademarks of as many as possible of the marks in actual use so that they are available for search purposes.”). If an application that contains no restrictions is approved for registration, Trademark Act Section 7, 15 U.S.C. § 1057, presumes that the owner’s rights in the registered mark will cover all means of distribution consistent with the listed goods. An owner of an unrestricted registration is entitled, at any time, to abandon or change any current trade channels or customer class restrictions to which it may, in practice, currently be adhering in the “real world.”¹⁸ *Detroit Athl. Co.*, 903 F.3d at 1308; *Can. Imperial Bank of Com. v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1492-93 (Fed. Cir. 1987).

The second problem with Applicant’s argument is that the cited registration contains no restrictions as to customers or trade channels. Lacking any restrictions, we give full sweep to the registration, considering it to cover all normal customers for such goods and all normal trade channels. *Detroit Athl.*, 903 F.3d at 1308. So even if we could consider the “wholesale only” restriction Applicant urges, the lack of any restrictions in the cited registration means that the channels of trade for the goods in the registration would necessarily include that specific “wholesale only” trade channel. *See, e.g., Narita Exp. LLC v. Adaptrend, Inc.*, No. 92074784, 2022 WL

¹⁸ While applicants and others sometimes urge the USPTO to look to “real world” conditions, it’s useful to keep in mind that the USPTO—and therefore the Registers and the public—relies on applicants to reflect their “real world” conditions as accurately as they can in their applications. The USPTO thus does, in fact, base its registration decisions on the “real world”—as described by applicants.

15328960, at *10 (TTAB 2022), *aff'd sub nom. Adaptrend, Inc. v. Stewart*, No. 23-1195, 2025 WL 313179 (Fed. Cir. Jan. 28, 2025) (unpublished); *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, No. 91189001, 2015 WL 5675641, at *12 (TTAB 2015).¹⁹

In short, we find on this record that the trade channels and classes of customer overlap. These factors, too, will count in favor of the refusal at the final weighing.

D. Alleged weakness of the mark in the cited registration

Applicant argues that the registered mark OGO is weak, its brief listing three other registrations (two for OGO and one for OGOGO) as support.²⁰ A substantial number of third-party registrations for marks similar to a cited registration and for the same or similar goods or services can show that the mark in a cited registration is conceptually weak. *See, e.g., Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1363 (Fed. Cir. 2023); *Institut Nat'l des Appellations d'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 1582 (Fed. Cir. 1992). The existence of three registrations falls well short of making a dent as to this factor. *See, e.g., i.am.symbolic*, 866 F.3d at 1329. But there's a bigger problem for Applicant: as the Examining Attorney points out, none of these registrations are in the evidentiary record.²¹ Thus, there is no evidence for us to consider. *See, e.g., In re Compania de Licores Internacionales S.A.*, No. 75010230,

¹⁹ Even if Applicant's unrestricted application by itself didn't preclude us from considering this argument, we note that Applicant provided no testimony providing the foundation for its factual assertions about Applicant's current business practices (let alone about those of the owner of the cited registration). We can't make factual findings even on relevant arguments based only on counsel's say-so. *See, e.g., Estée Lauder Inc. v. L'Oreal, S.A.*, 129 F.3d 588, 595 (Fed. Cir. 1997) ("arguments of counsel cannot take the place of evidence lacking in the record") (citation omitted).

²⁰ *See* 6 TTABVUE 10-11.

²¹ *See* 8 TTABVUE 6.

2012 WL 1267898, at *2 (TTAB 2012) (unless registrations are properly made of record in prosecution, listing them in appeals briefs is neither timely nor suffices to make them of record). Since this argument is not based on any evidence of record, we reject it. This factor is neutral.

E. Weighing the findings on the relevant factors together

Having made findings on each of the relevant likelihood-of-confusion factors, our final step is to weigh the findings we have made on the relevant factors together to determine if, on balance, they indicate that confusion is likely. *See, e.g., Charger Ventures*, 64 F.4th at 1384. In this case, this final task is straightforward, because all of the relevant factors weigh on the “confusion is likely” side of the scale (the marks are very similar, the goods are related, and the channels of trade and classes of customers overlap). No factors weigh against likely confusion. On this record, we have no difficulty concluding that confusion is likely.

Decision: We affirm the refusal.