

This Opinion is Not a
Precedent of the TTAB

Mailed: August 26, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re DCD IDID Enterprise, LLC

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Serial No. 87465751

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Molly B. Markley of Young Basile Hanlon & Macfarlane, P.C.,
for DCD IDID Enterprise, LLC.

Aubrey Biache, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

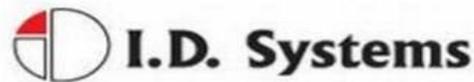
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Before Zervas, Heasley, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

DCD IDID Enterprise, LLC (“Applicant”) seeks registration on the Principal Register of the mark ID.IGNITION SYSTEMS in standard characters (IGNITION SYSTEMS disclaimed) for goods identified (as amended) as a “keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller

box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button,” in International Class 9.¹

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), on the ground that the mark so resembles the registered mark shown below:



(I.D. SYSTEMS disclaimed) for “wireless transmitters and receivers for use with vehicles and other powered assets,” in International Class 9,² as to be likely, when used on or in connection with the goods identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, 4 TTABVUE,³ which was denied. 5 TTABVUE. Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

¹ Application Serial No. 87465571 was filed on May 26, 2017 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claimed first use of the mark and first use of the mark in commerce at least as early as November 30, 2016. Applicant amended the application during prosecution to change its filing basis to seek registration under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce.

² The cited Registration No. 3054321 issued on January 31, 2006 and was last renewed in 2016. The registrant describes the mark as consisting of “an incomplete circle forming the stylized letters ‘I’ and ‘D’ with the dot over the letter ‘I’ in the color red and the words ‘I. D. Systems’ in black.” The colors red and black are claimed as features of the mark.

³ Citations in this opinion to the briefs and the reconsideration request refer to TTABVUE, the Board’s online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear.

I. Evidentiary Issues

Before proceeding to the merits of the refusal, we address two evidentiary matters. Applicant attached to its brief copies of three registrations that it owns, which its claims explain how the “ID” portion of the applied-for mark will be perceived by consumers. 7 TTABVUE 6, 12-17. These registrations were not made of record during prosecution. The Examining Attorney “objects to this new evidence and requests that the Board disregard it.” 9 TTABVUE 6.

Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), provides that the “record in the application should be complete prior to the filing of an appeal,” and that “[e]vidence should not be filed with the Board after the filing of a notice of appeal.” “If the appellant . . . desires to introduce additional evidence after an appeal is filed, the appellant . . . should submit a request to the Board to suspend the appeal and to remand the application for further examination.” *Id.* Applicant did not do so, and we sustain the Examining Attorney’s objection to Applicant’s untimely evidence and have given it no consideration in our decision. *See, e.g., In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018).

The Examining Attorney appears to request the Board to take judicial notice of dictionary definitions of the words “ignition” and “vehicle” from the MERRIAM WEBSTER ONLINE DICTIONARY (merriam-webster.com). 9 TTABVUE 9 n.3; 18 n.22. The definitions were not attached to the Examining Attorney’s brief, but “the Board may, *sua sponte*, take judicial notice of dictionary definitions,” *In re Jimmy Moore*

LLC, 119 USPQ2d 1764, 1768 (TTAB 2016), and we take judicial notice of these definitions and will consider them for any probative value that they may have.

II. Record on Appeal⁴

The record on appeal includes Applicant's specimen of use;⁵ dictionary definitions of the words "system" and "transponder," made of record by the Examining Attorney;⁶ pages from the website at abbreviations.com regarding the significance of "ID" and "I.D." in the involved marks, made of record by the Examining Attorney;⁷ Internet webpages regarding keyless entry and ignition systems, and wireless transmitters and receivers, made of record by the Examining Attorney;⁸ a page from the website of the owner of the cited registration at id-systems.com,⁹ and a page from Applicant's website,¹⁰ both made of record by Applicant; third-party registrations of marks for the same or similar goods as identified in the application and cited registration, made

⁴ Citations in this opinion to the application record are to pages in the Trademark Status & Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO").

⁵ The Examining Attorney found the specimen to be unacceptable, August 17, 2017 Office Action at TSDR 1, and as noted above, Applicant responded by amending its filing basis to seek registration under Section 1(b) of the Trademark Act. February 16, 2018 Response to Office Action at TSDR 1.

⁶ August 17, 2017 Office Action at TSDR 5-12.

⁷ May 5, 2018 Final Office Action at TSDR 2-7.

⁸ August 17, 2017 Office Action at TSDR 13-24; May 5, 2018 Final Office Action at TSDR 8-48.

⁹ February 16, 2018 Response to Office Action at TSDR 2; 4 TTABVUE 12 (October 31, 2018 Request for Reconsideration).

¹⁰ 4 TTABVUE 13 (October 31, 2018 Request for Reconsideration).

of record by the Examining Attorney;¹¹ and articles regarding classic cars and their restoration, made of record by both Applicant,¹² and the Examining Attorney.¹³

III. Analysis of Likelihood of Confusion Refusal

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, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under § 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. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

Two key factors in every § 2(d) case are the similarity or dissimilarity of the marks and the goods or services because 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). Both Applicant and the Examining Attorney address these key factors. 7 TTABVUE 4-9; 9 TTABVUE 7-19. Both also discuss the third *DuPont* factor, the similarity or dissimilarity of

¹¹ May 5, 2018 Final Office Action at 49-66.

¹² 4 TTABVUE 14-33 (October 31, 2018 Request for Reconsideration).

¹³ 5 TTABVUE 4-39 (November 21, 2018 Denial of Request for Reconsideration).

established, likely-to-continue trade channels, and the fourth *DuPont* factor, the sophistication of the relevant consumers. 7 TTABVUE 9-10; 9 TTABVUE 19-21.

A. Similarity or Dissimilarity of the Marks

The first *DuPont* factor is “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps., Inc. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)). “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.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quotation omitted). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than specific impression of marks.” *In re i.am.symbolic*, 127 USPQ2d 1627, 1630 (TTAB 2018) (citations omitted). The average customers of the goods identified in the application include owners of a “classic and hot rod automotive vehicle” who seeks to retrofit the vehicle with a keyless entry and keyless ignition system, and, as discussed below, may also include service providers who perform the retrofit. As discussed below, the average customers are also customers of the goods identified in the cited registration.

1. Applicant's Arguments

Applicant acknowledges that the marks “share some similarities,” 7 TTABVue 4, but claims that they “are not similar in appearance, sound or connotation.” *Id.* Applicant argues that the cited registered mark is “a weak indicator of source because it is descriptive of the goods (essentially vehicle identification systems),” and that the “distinctive portion of the cited mark is the design which is not incorporated into Applicant’s mark.” *Id.* Applicant argues that the marks look different because the letters “ID” in its mark are not separated by periods, and that the ID “portion of the marks has different connotations” because “[i]n the cited mark, the ‘ID’ refers to ‘identification’ while Applicant’s mark refers to a portion of Applicant’s corporate name, IDIDIT.” *Id.* Applicant also focuses on the presence of the word IGNITION in its mark, which it claims “changes the appearance and sound of the marks.” *Id.*

Applicant dismisses the common presence of the elements “ID” and “SYSTEM” in the marks on the ground that it “is well settled that highly suggestive and widely used marks are not entitled to a broad scope of protection.” *Id.* at 5. Applicant claims that the Examining Attorney improperly “discounts the different connotation of ID in Applicant’s mark because the definition of ID means identification” in the cited mark, while “ID.IGNITION SYSTEMS does not make sense when referenced as identification ignition systems.” *Id.* at 5-6. Applicant also argues that “the phrase ‘ignition systems’ in Applicant’s mark is a phrase read together and has relevant meaning.” *Id.* at 6. Applicant concludes that the “addition of ‘IGNITION’ and meaning of ID in Applicant’s mark in combination with the distinctive design used by the cited mark is enough to distinguish the marks from one another.” *Id.*

2. The Examining Attorney's Arguments

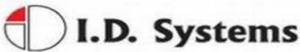
The Examining Attorney responds that “the marks are similar because they both contain the word **ID** and **SYSTEMS**.” 9 TTABVue 7. She argues that “both marks contain variations of the abbreviation **ID** at the beginning,” and that a “consumer’s eye would be drawn to this word, and the consumer would be more likely to utilize it in calling for the goods.” *Id.* at 8. She also claims that “the marks have a similar syntax; they start with the wording **ID** followed by **SYSTEMS**,” *id.*, and that the marks “are also confusingly similar because the wording **ID.IGNITION SYSTEMS** and **I.D. SYSTEMS** convey analogous meanings” because “**I.D.** and **ID** are commonly recognized as abbreviations for **IDENTIFICATION**.” *Id.* at 9. According to the Examining Attorney, “it is reasonable to expect consumers to view both **I.D.** and **ID** as abbreviations for identification, rather than registrant’s usage of the wording **I.D.** representing identification and applicant’s usage of the wording **ID** representing applicant’s corporate name, **IDIDIT**.” *Id.*

The Examining Attorney further argues that “[t]he additional wording **IGNITION** in applicant’s mark does not obviate the similarity of the marks,” *id.* at 10, because “both marks convey the meaning that they are devices for a common purpose which emanate from the same source, **ID**” and “Applicant’s mark simply specifies that its purpose[] is for igniting fuel mixture.” *Id.* at 9. She claims that the “wording **IGNITION** is not distinctive; rather, it is generic” because it “appears in Applicant’s identification of goods.” *Id.* at 14.

With respect to the design element in the cited mark, the Examining Attorney argues that it “does not overcome the similarity of the marks” because Applicant’s

mark is in standard character form and Applicant “may display its mark with a similar design as registrant’s mark and cause confusion as to the source of the goods,” 9 TTABVUE 13, and because “consumers are going to look toward the wording in registrant’s mark as the identifier of registrant’s goods, rather than the design.” *Id.* at 11. She rejects Applicant’s claim that the cited mark is weak because “applicant has not submitted any timely evidence of third-party registrations to supports its contention” and cannot rely on the fact that the entire literal element of the cited mark has been disclaimed because “a disclaimer does not remove the disclaimed portions from the mark for the purposes of comparing the marks in a likelihood of confusion determination,” and the “public is generally not aware of disclaimers in trademark applications and registrations that reside only in the USPTO’s records.” *Id.* at 12.

3. Analysis of Similarity or Dissimilarity of the Marks

The marks are ID.IGNITION SYSTEM in standard characters (IGNITION SYSTEMS disclaimed) and  (I. D. SYSTEMS disclaimed). We turn first to the cited mark, which contains both a design element, and a word element that has been disclaimed in its entirety, because Applicant and the Examining Attorney disagree about its dominant portion.

The marks must be considered in their entireties, but “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in

their entireties.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985)). Applicant argues that the design is the distinctive portion of the cited mark, 7 TTABVUE 4, while the Examining Attorney argues that consumers will look to the words “as the identifier of registrant’s goods, rather than the design.” 9 TTABVUE 11. We agree with the Examining Attorney.

In composite marks such as the cited mark, “the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.” *In re Aquitaine Wine USA, LLC*, 118 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)). “This makes sense given that the literal component of brand names likely will appear alone when used in text and will be spoken when requested by consumers.” *Viterra*, 101 USPQ2d at 1911. Applicant argues that this general principle does not apply to the cited mark, however, because the “entire word portion of the mark ‘i.d. systems’ is disclaimed because it is descriptive of the goods (essentially vehicle identification systems).” 7 TTABVUE 4.

In *Viterra*, the Federal Circuit noted that “the dominant portion of a composite word and design mark is the literal portion, even where the literal portion has been disclaimed.” *Viterra*, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983)). In *Viterra*, the

Board had found that the words “X-Seed” were the dominant portion of the applicant’s mark, shown below:

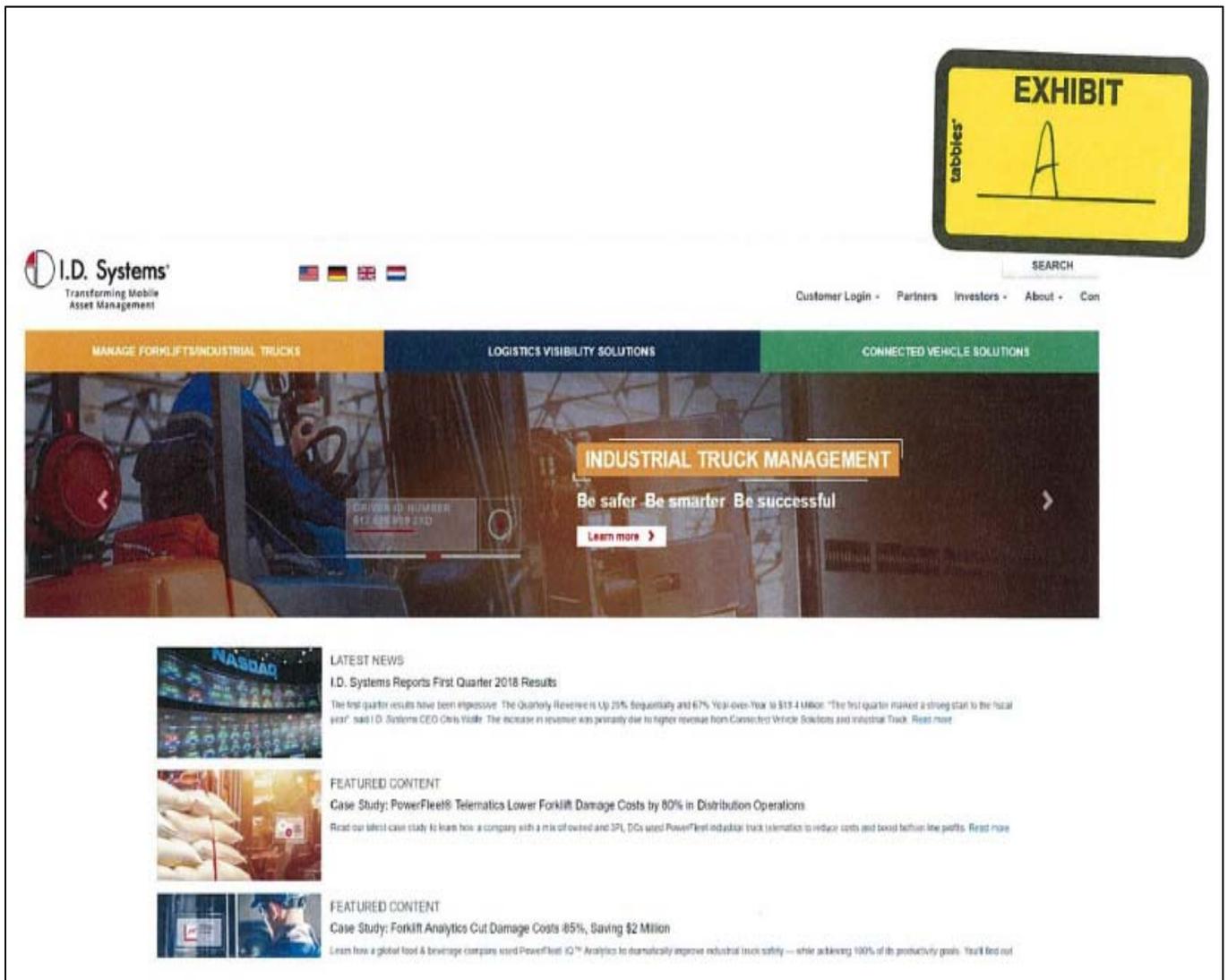


even though the word “seed” had been disclaimed. The applicant argued on appeal that “the dominant portion of the X-Seed Mark actually is the stylized letter ‘X’ and cannot include ‘-Seed,’ particularly because the registrant used a hyphen to separate ‘X’ from ‘Seed’ and disclaimed the term ‘Seed.’” *Id.* The Federal Circuit rejected that argument, holding that “disclaimed matter still forms a part of the mark and cannot be ignored in determining likelihood of confusion,” *id.* (quoting *Giant Food*, 218 USPQ at 395), and pointing out that in *Giant Food*, it had found “that the term ‘GIANT’ was the dominant portion of a mark consisting of the words GIANT HAMBURGERS with a large background design, even though the applicant disclaimed ‘GIANT HAMBURGERS.’” *Id.* (quoting *Giant Food*, 218 USPQ at 395).

The Federal Circuit noted in *Viterra* that that case was not one “where a larger design is separate and independent from the literal features of the mark.” *Id.* The cited mark here, reproduced again below, differs from the mark in *Viterra* insofar as the design element is not a backdrop for the words, but rather is “separate and independent from the literal features of the mark.” *Id.*



We find, however, that this does not make the design element of the cited mark its dominant element. As the Federal Circuit explained in *Viterra*, whether or not the words in a composite mark have been disclaimed, they “likely will appear alone when used in text and will be spoken when requested by consumers.” *Id.* This is confirmed in the case of the cited mark by a page from the registrant’s website at id-systems.com that Applicant made of record. It displays the cited mark and shows that the registrant identifies itself as “I.D. Systems”:



4 TTABVUE 12 (October 31, 2018 Request for Reconsideration). We can infer from the registrant's use of the words I.D. SYSTEMS that notwithstanding the disclaimer of those words in the cited registration, consumers will use them to refer to the registrant, and to call for its products, because the "public is unaware of disclaimers that 'quietly reside' in the records of the Office." *Aquitaine Wine USA*, 126 USPQ2d at 1188 (quoting *In re Wada*, 48 USPQ2d 1689, 1692 (TTAB 1998)). *See also Nat'l Data*, 224 USPQ at 751 ("The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO"); *Giant Food*, 218 USPQ at 395 ("disclaimers are not helpful in preventing likelihood of confusion in the mind of the consumer, because he is unaware of their existence"). The relatively nondescript nature of the oval design element in the cited mark,¹⁴ and the likely use by consumers of the words in the cited mark to identify the source of the goods, notwithstanding their disclaimer in the registration, are rational reasons to find that the words I.D. SYSTEMS, not the design element, are the dominant portion of the cited mark.¹⁵ We turn now to a comparison of the marks in their entireties, giving

¹⁴ As noted above, the registrant described the design element of its mark as "an incomplete circle forming the stylized letters 'I' and 'D' with the dot over the letter 'I' in the color red." As explained in Section 808.02 of the TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") (Oct. 2018), "a description cannot be used to restrict the likely public perception of a mark" and "a mark's meaning is based on the impression actually created by the mark in the minds of consumers, not on the impression that the applicant states the mark is intended to convey." We doubt that consumers would view the design in the abstract manner in which it is described by the registrant, but to the extent that it was, it would reinforce the dominance of the words, which begin with I.D.

¹⁵ Applicant also argues that the cited mark is "a weak indicator of source and should be limited in its scope," 7 TTABVUE 4, and that "highly suggestive and widely used marks are not entitled to a broad scope of protection." *Id.* at 5. The registrant's disclaimer of the words I.D. SYSTEMS in the cited mark reflects the presumed descriptiveness of those words, but even conceptually weak registered marks are protected under Section 2(d). *See, e.g., King*

greater weight in that comparison to the words I.D. SYSTEMS in the cited mark than to the oval design element.

Applicant's mark ID.IGNITION SYSTEMS and the dominant literal portion of the cited mark I.D. SYSTEMS have similar structures when read and verbalized, as each begins with the letters ID and ends with the word SYSTEMS. It is significant that in both marks, the letters ID are the first literal element because "it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). *See also Detroit Athletic Co.*, 128 USPQ2d at 1050; *Palm Bay Imps.*, 73 USPQ2d at 1692. It is particularly likely here that the letters ID will be "impressed upon the mind of a purchaser and remembered," *Presto Prods.*, 9 USPQ2d at 1897, because the words SYSTEMS and IGNITION SYSTEMS that follow the letters ID in both marks, and are modified by them, have little or no source-identifying capacity

Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974); *cf. In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1743-45 (TTAB 2016) (conceptually weak marks registered on the Supplemental Register are protected under Section 2(d)). Applicant has submitted no evidence of third-party registrations of marks containing the disclaimed words, which might show that this segment of the cited mark "has a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak," *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (internal quotation omitted), and no evidence of third-party use of marks containing those words, which might show that they are "widely used," 7 TTABVUE 4, and "that customers have become so conditioned by a plethora of such similar marks that customers 'have been educated to distinguish between [such] marks on the bases of minute distinctions.'" *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *Palm Bay Imps.*, 73 USPQ2d at 1694). On this record, we cannot find that the conceptual weakness of the cited mark materially affects our analysis of its similarity to the applied-for mark.

per se in either mark. The initial letters ID have the most source-identifying significance in the words in both marks.

Because the literal portions of the I.D. SYSTEMS and ID.IGNITION SYSTEMS marks both begin with ID and end with SYSTEMS, they are similar in overall appearance and sound. Those similarities outweigh the differences resulting from the presence of the oval design in the cited mark and the presence of the word IGNITION in Applicant's mark. We must take into account "the recollection of the average customer, who retains a general rather than specific impression of marks," *i.am.symbolic*, 127 USPQ2d at 1630, and the fact that the "marks 'must be considered . . . in light of the fallibility of human memory' and 'not on the basis of side-by-side comparison.'" *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977)). *See also Neutrogena Corp. v. Bristol-Myers Co.*, 410 F.2d 1391, 161 USPQ 687, 688 (CCPA 1969) (many consumers "may have but dim recollections from having previously seen or heard one or the other of the involved marks"). To the extent that the marks differ in appearance and sound because an oval design appears in the cited mark, but not in Applicant's,¹⁶ and the

¹⁶ The Examining Attorney argues that Applicant may display its standard character ID.IGNITION SYSTEM mark "with a similar design as registrant's mark and cause confusion as to the source of the goods," 9 TTABVUE 13, but we cannot make such an assumption. We "must consider that the literal elements of the mark (the words and the letters) may be presented in any font style, size or color, including the same font, size and color of the literal portions of [the cited] mark," *Aquitaine Wine USA*, 118 USPQ2d at 1186, but "[w]hen we are comparing a standard character mark to a word + design mark for Section 2(d) purposes, we will consider variations of the depictions of the standard character mark *only with regard to* 'font style, size, or color of the 'words, letters, numbers, or any combination

word IGNITION appears in Applicant's mark, but not in the cited mark, consumers with "dim recollections from having previously seen or heard one or the other of the involved marks," *id.*, and who have retained only a general impression of their appearance and pronunciation, are unlikely to differentiate the marks in either appearance or sound on the basis of these differences.¹⁷

Applicant appears to claim that the key difference between the marks is in connotation and commercial impression. Applicant argues that "the ID portion of the marks has different connotations," specifically "identification" in the cited mark and "a portion of Applicant's corporate name, IDIDIT" in Applicant's mark, 7 TTABVUE 4, and that "unlike the cited mark where ID SYSTEMS means identification, ID.IGNITION SYSTEM does not make sense when referenced as identification ignition systems." *Id.* at 4-5. There is nothing on the face of Applicant's ID.IGNITION SYSTEMS mark, however, that supports either argument, or that signals to consumers that "ID" does not have the same meaning in Applicant's mark that Applicant's attributes to it in the cited mark. "[W]e must look to the likely consumer perception of the mark in connection with the identified goods, rather than applicant's intended connotation." *UMG Recordings, Inc. v. Mattel, Inc.*, 100 USPQ2d 1868, 1886 (TTAB 2011). *See also* TMEP Section 1207.01(b)(v) (citing cases in which the meaning of otherwise identical marks differed in the context of different goods). Applicant's

thereof." *Id.* at 1187 (citing *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011) and *Viterra*, 101 USPQ2d at 1909).

¹⁷ It seems even less likely that consumers will differentiate the marks in appearance because "ID is not separated by periods" in Applicant's mark. 7 TTABVUE 4.

goods are a “keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button.” In the context of those goods, which allow a vehicle owner to enter and start the vehicle remotely, it is at least plausible that consumers would understand “ID” in Applicant’s mark to mean “identification,” or a “card or badge used to identify the bearer,”¹⁸ because the keyfob that activates the system is a form of identification of the owner. At the very least, there is nothing on the face of the mark to indicate that “ID” in Applicant’s mark has the meaning attributed to it by Applicant,¹⁹ or any meaning other than its most common one as an initialism referring to identification or a form of identification.²⁰

As discussed below, the goods identified in the registration as “wireless transmitters and receivers for use with vehicles and other powered assets” encompass component parts of Applicant’s “keyless entry system and keyless ignition switch system.” A purchaser or repairer of one of Applicant’s ID.IGNITION SYSTEMS keyless entry and ignition systems who is exposed to the cited mark, which is dominated by the words I.D. SYSTEMS and used in connection with replacement

¹⁸ May 5, 2018 Final Office Action at TSDR 3.

¹⁹ Applicant seeks registration of ID.IGNITION SYSTEMS alone, without other elements of its claimed corporate identity. We may consider the applied-for mark only as it is shown in Applicant’s drawing, not as it is actually used. *Aquitaine Wine USA*, 126 USPQ2d at 1186 (citing cases).

²⁰ May 5, 2018 Final Office Action at TSDR 2-7.

parts for that system, could readily believe that those parts are affiliated with the manufacturer of the ID.IGNITION SYSTEMS keyless entry system and ignition system.

There are differences between the marks in appearance and sound when they are considered in their entirety, but their similarities in those means of comparison, and in connotation and commercial impression, outweigh their differences. We find that the first *DuPont* factor supports a finding of a likelihood of confusion.

B. Similarity or Dissimilarity of the Goods and Channels of Trade

The second *DuPont* factor “considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,’” *Detroit Athletic Co.*, 128 USPQ2d at 1051 (quoting *DuPont*, 177 USPQ at 567), while the third *DuPont* factor “considers ‘[t]he similarity or dissimilarity of established, likely-to-continue trade channels.’” *Id.* at 1052 (quoting *DuPont*, 177 USPQ at 567). Our analysis under these factors is based on the identifications of goods in the application and the cited registration. *Id.*; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014).

It is “not necessary that the products . . . be identical or even competitive to support a finding of a likelihood of confusion.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven, Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). “[L]ikelihood of confusion can be found ‘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.” *Id.* (internal citations omitted).

The goods identified in the application are a “keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button.” The goods identified in the cited registration are “wireless transmitters and receivers for use with vehicles and other powered assets.” Applicant and the Examining Attorney take very different views of the nature of these goods, particularly those identified in the cited registration.

1. Applicant’s Arguments

Applicant argues that while the goods are “remotely related, [they] are different and targeted to different consumers.” 7 TTABVUE 6. Applicant describes its goods as “ignition systems for installation into vehicles” that are “used to put a keyless ignition system into a hot rod or customize a vehicle.” *Id.* Applicant describes the goods in the cited registration as “transmitters and receivers for controlling, tracking and managing vehicles, such as a fleet of fork lifts and tracker trailers,” *id.* at 7, which are “used for mobile asset management of commercial and industrial vehicles” as part of “an identification system used to keep track of and manage fleets of vehicles.” *Id.* at 7-8. Applicant bases the latter description on extrinsic evidence of the registrant’s

use of the cited mark, in the form of a page from the registrant's website. *Id.* at 9.²¹

Applicant concludes that

[w]hile both of the goods relate to the general field of vehicles, one is used as an automotive part in the classic car industry and the other is used in connection with tracking a variety of vehicles. The goods have such different purposes and are sold to different purchaser[s], they are sufficiently unrelated so that confusion in the marketplace is unlikely.

Id.

2. The Examining Attorney's Arguments

The Examining Attorney argues that the goods are related because "Applicant's keyless entry systems and keyless ignition switch systems contain registrant's goods." 9 TTABVUE 15. Specifically, she argues that Applicant's "goods feature registrant's goods as a component of the keyless entry and keyless ignition systems," that "these goods are used together to perform a specific function" *id.* at 17, and that "customers may view registrant's goods as replacement parts for applicant's goods."

Id.

The Examining Attorney bases these arguments on the presence of the word "transponder" in the portion of Applicant's identification of goods that states that they are comprised in part of [a] "keyfob with electronic signal transponder." *Id.* at 16. We display below an example of a "keyfob":

²¹ 4 TTABVUE 12 (October 31, 2018 Request for Reconsideration).



The Examining Attorney cites a dictionary definition of “transponder” as “[a] radio or radar transmitter-receiver activated for transmission by reception of a predetermined signal,” *id.*,²³ and argues that “[A]pplicant’s goods contain transmitters and receivers.” *Id.* She cites “multiple examples of third parties offering remote keyless entry systems and keyless ignition systems” that “feature transmitters and receivers,” *id.*, as well as third-party registrations of marks “for use in connection with the same or similar goods and/or services as those of both applicant and registrant in this case.” *Id.*

The Examining Attorney rejects Applicant’s argument that the registrant’s goods are “used for mobile asset management of commercial and industrial vehicles” as part of “an identification system used to keep track of and manage fleets of vehicles.” 7 TTABVUE 7-8. She does so because “according to registrant’s identification of goods, there are no limitations as to nature, type, channels of trade, or classes of purchasers,” and “Registrant’s goods contain[] the broad language ‘for use with

²² August 17, 2017 Office Action at TSDR 19.

²³ *Id.* at TSDR 12 (THE AMERICAN HERITAGE DICTIONARY (ahdictionary.com)).

vehicles and other powered assets,” 9 TTABVUE 18, which she argues means that “registrant’s wireless transmitters and receivers can be used on forklifts, tractor trailers, hot rods, classic cars, and anything else that would be encompassed by the wording ‘vehicles and other powered assets.’” *Id.* The Examining Attorney further argues that “registrant’s identification of goods does not limit the function of the wireless transmitters or receivers,” such that “these goods can perform any function that wireless transmitters and receivers can perform.” *Id.* She concludes that “registrant’s wireless transmitters and receivers can be used for retrofit installation into classic and hot rod automobile vehicles” *Id.* at 19.

3. Analysis of Similarity or Dissimilarity of the Goods and Channels of Trade

The “wireless transmitters and receivers” identified in the cited registration are broadly described, and are unrestricted except as to their field of use. Accordingly, we must presume them to include all types of “wireless transmitters and receivers” that could be used “with vehicles and other powered assets.” *See, e.g., In re FCA US LLC*, 126 USPQ2d 1214, 1219 (TTAB 2018) (holding that “[w]e must presume that Applicant’s goods include all goods of the type identified, *i.e.*, all ‘passenger automobiles [and] their structural parts,’ as well as all kinds of automotive ‘trim and badges’” and that “[w]e consider Registrant’s services to include installation of all kinds of specialty automotive equipment, and not merely equipment to enhance off-road capability”); *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).²⁴

²⁴ The nature and scope of the goods identified in the cited registration cannot be limited based on Applicant’s extrinsic evidence from the registrant’s website of the registrant’s current actual use of the registered mark. 7 TTABVUE 9 (“[t]he owner of the cited mark sells

A “transponder,” one component of the “keyfob with electronic signal transponder” that is part of Applicant’s “keyless entry system and keyless ignition switch system,” is a type of “wireless transmitter and receiver” that can be “use[d] with vehicles and other powered assets.” In addition, the “electronic signal receiver” that is part of Applicant’s keyless systems is another form of a “wireless . . . receiver” “use[d] with vehicles and other powered assets.” Accordingly, we agree with the Examining Attorney that Applicant’s “keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button” contains the goods identified in the cited registration.

The record shows that “wireless transmitters and receivers” and “electronic signal receiver” are integral (indeed indispensable) components of keyless entry and ignition systems for automobiles. A keyfob (like the one shown above) is a “wireless

transmitters and receivers and these goods are not sold as vehicle parts,” but rather are “used to identify and track any powered asset, such as a fork lift or a rental car fleet (Exhibit D, previously submitted as Exhibit A in Applicant’s Request for Reconsideration”). See *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008) (“applicant’s reliance on registrant’s website in an attempt to restrict the scope of registrant’s goods is to no avail” because “an applicant may not restrict the scope of the goods covered in the cited registration by argument or extrinsic evidence”); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (an applicant cannot “restrict the scope of its goods in its application and the scope of the goods covered in the cited registration by extrinsic argument and evidence while neither the recitation of goods in applicant’s application nor the recitation of goods in the cited registration is so restricted”). Applicant’s entire argument on the second *DuPont* factor is based on the registrant’s actual use of the registered mark, 7 TTABVue 7-9, not on the identification of goods in the cited registration.

transmitter,” and we display below examples of record evidence regarding the use of “wireless transmitters and receivers” in keyless entry and ignition systems:

https://www.propertycasualty360.com/2016/02/24/5-things-you-need-to-know-about-keyless-ignition-s/?slreturn=20180405082135

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without a traditional key.

The keyless entry and immobilizer system operate generally the same way. As explained by the web site [How Stuff Works](#), a keyless-entry fob is a standard radio-transponder.

Inside the fob is a circuit board, a radio transmitter, a battery and an antenna. As you approach your vehicle — within 5 to 10 feet generally — you can press the button to unlock your doors — pretty common on most vehicles in 2016. The radio frequency identification chip (RFID) in the fob sends out a code of 40 impulses broadcast on different frequencies. The corresponding RFID chip in the car receives this code and accesses the vehicle's software to find out whether the code is the right one. If it is, the doors unlock.

Keyless entry is considered an active RFID system, because pushing the button sends out the code, instead of receiving it. The immobilizer chips in the ignition keys that lock out car thieves are also active.

Keyless ignition is defined as a passive RFID system. Your vehicle sends out the code and the ignition chip receives it, instead of the chip sending the signal first. For additional security, keyless ignition systems have no battery (or a different kind), and they have a lower-power antenna, so they won't broadcast as far, according to How Stuff Works.

Verification of the correct device is done electronically when you attempt to start the vehicle, usually by pushing a button or turning a rotary switch.



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²⁵ May 5, 2018 Final Office Action at TSDR 9 (emphasis supplied by the Examining Attorney).

The screenshot shows the Mouser Electronics website interface. At the top, there is a navigation bar with 'Products', 'Manufacturers', 'Applications', 'Services & Tools', 'Catalog', and 'Help'. Below this is a search bar and a 'Log In' button. The main content area is titled 'Automotive Applications' and features a sub-section for 'Automotive Application - Keyless Entry System'. This section includes a 'Keyless Entry System Block Diagram' showing the interaction between a 'Remote' (with RF, LF, MCU, and AFE components) and a 'Car/Base Unit' (with RF, LF, Processor, EEPROM, LIN, and CAN transceivers). It also lists various power management components like DC/DC converters, LDOs, and regulators. A 'View Product List' sidebar on the right provides a list of related components. The page is numbered '26' in the bottom right corner.

The advertisement for the REC-10 Deluxe Keyless Entry Module with ATV™ features a yellow header and a list of system components. The text describes the product as a receiver kit that converts an existing O.E.M. electronic door locking system to a Remote Keyless Entry System. The system includes:

- Audible and Visual ATV™.
- Two Code Jumping Transmitters.
- Door Lock /Unlock / Driver's Door Priority Outputs.
- Starter Interrupt Output.
- Dome Light & Parking Light Illumination.
- Trunk Output.
- Option Output.
- Anti Hijack Protection

An image on the right shows the REC-10 module, two transmitters, and various wiring harnesses. The page is numbered '27' in the bottom right corner.

²⁶ August 17, 2017 Office Action at TSDR 18. This webpage identifies certain components as “transceivers.” The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed form or regular fixed editions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). We take judicial notice that a “transceiver” is “a radio transmitter-receiver that uses many of the same components for both transmission and reception.” MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on August 22, 2019).

²⁷ August 17, 2017 Office Action at TSDR 21 (emphasis supplied by the Examining Attorney).



95600 STAND ALONE REMOTE ENGINE STARTER SYSTEM WITH KEYLESS ENTRY

\$117.30

1

SKU: 95600. Category: Keyless Entry's / Alarm / Remote Start.

Description

Product Description

Our 95600 remote starter gives you all the same features as our combination unit, but with out the alarm feature. Stop sitting in that cold car waiting for the engine to warm-up. Our transmitter can start your vehicle from as far away as 600 feet.

- Two 5 Button Remote Controls
- Built-In Parking Light Relay Programmable (+/-).
- Plug-in Override Switch
- Door Locking/Unlocking with (+/-) outputs.
- Passenger Unlock Output
- True RPM Sensing
- Reliable Smart Engine Run Sensing
- Gas or Diesel Mode with glow plug input.
- Cold Start Timer (Programmable)
- Factory Transponder Bypass
- Starter Disable Output for Anti Grind feature.
- Factory Disarm Rearm Outputs
- Two Ignition Relay Outputs
- Stop & Go Mode
- Selectable Engine Run Time
- Turbo Timer (Programmable)

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The Examining Attorney also made of record third-party registrations of marks for goods identified as “keyless entry systems for vehicles comprised of a microprocessor, electronic signal receiver and keyfob with electronic signal transponder,”²⁹ or a “keyless entry system and keyless ignition switch system for automotive vehicles comprised of a microprocessor, electronic signal receiver and keyfob with electronic signal transponder.”³⁰ These registrations confirm that “electronic signal receivers” and “electronic signal transponders” are integral parts of a “keyless entry system and keyless ignition switch system” for automobiles.

²⁸ May 5, 2018 Final Office Action at TSDR 21.

²⁹ *Id.* at TSDR 49-51.

³⁰ *Id.* at TSDR 52-66.

We have long recognized that a finished product, and a component part of that product, are related for purposes of the second *DuPont* factor because the sale of those goods under the same or similar marks may give rise to a likelihood of confusion. *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910, 911 (TTAB 1978) (finding a likelihood of confusion arising from use of THUNDERBOLT for cartridge heaters and THOR'S 3 IN 1 THUNDERBOLT and design for electrically energized ovens because "there exists an intimate relationship between a finished product such as registrant's oven and the component parts which comprise such oven such as applicant's cartridge heater"); *see also In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009) (finding that goods identified as "electric motors for machines" were related to goods identified as "air compressors and parts therefor" because "the record show[ed] that an electric motor is or can be an essential component and/or replacement part of an air compressor"); *Teledyne Techs., Inc. v. W. Skyways, Inc.*, 78 USPQ2d 1203, 1207 (TTAB 2006) (finding that ignition harnesses for piston aircraft engines and aircraft engines were "commercially related" because harnesses were a component part of aircraft engines). Because "wireless transmitters and receivers for use with vehicles" are indispensable components of a "keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button," the goods identified in the cited registration could be sold as replacement parts for the original "electronic signal receiver[s]" and "keyfob

with electronic signal transponder and button.” Under the circumstances, in addition to possible confusion on the part of the owner of an ID. IGNITION SYSTEM keyless entry and ignition system seeking to replace an “electronic signal receiver” or “keyfob with electronic signal transponder and button” with a “wireless transmitter” or “wireless receiver” sold under the registered mark, there are additional scenarios “where a likelihood of confusion could exist where a finished product and a component of such finished product were sold under the same or similar marks.” *Int’l Tel. & Tel.*, 197 USPQ at 911 (discussing possible confusion on the part of repairers of the finished product and competitors of the producer of the finished product).

We find that the “the respective products are related in some manner” and that “the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source,” *Coach Servs.*, 101 USPQ2d at 1722 (internal quotation marks omitted), when sold under similar marks. The second *DuPont* factor supports a finding of a likelihood of confusion.

With respect to the third *DuPont* factor, the similarity or dissimilarity in the channels of trade, Applicant argues that its “goods are typically sold to car enthusiasts who are customizing their automobile,” while the goods in the cited registration “are targeted towards owners of multiple vehicle assets, typically in a commercial or industrial setting.” 7 TTABVUE 9. Like Applicant’s argument regarding the nature of the goods themselves, this argument is incorrectly premised on extrinsic evidence of the registrant’s actual current use of its mark, rather than evidence regarding the channels of trade and classes of consumers for all types of

“wireless transmitters and receivers for use with vehicles and other powered assets,” the goods as identified in the cited registration. The Examining Attorney correctly points out that in the absence of limitations as to channels of trade or classes of purchasers in the identifications of goods, “the presumption is that the goods . . . move in all trade channels normal for such goods . . . and are available to all potential classes of ordinary consumers of such goods” 9 TTABVUE 19 (citing *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1738 (TTAB 2018)).

It is self-evident that the purchasers or installers of a “keyless entry system and keyless ignition switch system for retrofit installation into classic and hot rod automotive vehicles comprised of electric wire harnesses for automobiles, controller box in the nature of electrical controllers, microprocessor, electronic signal receiver, and keyfob with electronic signal transponder and button,” may also be purchasers of replacement parts for those systems, such as the “wireless transmitters and receivers for use with vehicles” identified in the cited registration. Indeed, the “car enthusiast who uses [Applicant’s] product to retrofit an ignition system into a car that does not have a keyless ignition system,” and “the mechanics who are able to work on these cars” to retrofit them, or to repair installed systems, 7 TTABVUE 10, are logically the primary, if not exclusive, customers for replacement parts for those systems. Accordingly, the classes of consumers for the keyless systems and their replacement parts overlap and more likely are one and the same.

The record shows that Applicant and other sellers of keyless entry and ignition systems sell systems through their own websites, and that at least some of those

sellers also sell replacement parts through the same websites.³¹ Applicant's website lists the ID.IGNITION SYSTEMS system together with multiple other products under the heading "Accessories."³² The webpages of other sellers of keyless entry and ignition systems similarly list various components and accessories, and some discuss product updates and service and support.³³ One specifically states that defective parts will be replaced under warranty "F.O.B. our factory without charge provided the defective part(s) is returned to our factory,"³⁴ while another refers to "Ford Replacement and Performance Harnesses."³⁵ The Examining Attorney also made of record pages from the website of Pep Boys, an automotive products retailer, showing a replacement keyfob for Chrysler, Dodge, and Jeep keyless entry systems,³⁶ but it is not clear whether that retailer or others like also sell keyless entry and ignition systems per se.

The record shows at least some overlap in the channels of trade for the systems and replacement parts for the systems. In addition, it shows that replacement parts for keyless entry and ignition systems are produced or sold by at least some of the companies who produced the systems themselves, as well as by independent

³¹ We can infer from the sale of systems and parts through these websites that those goods are also sold together in any brick-and-mortar world stores operated by these sellers.

³² May 26, 2017 Specimen at TSDR 1.

³³ August 17, 2017 Office Action at TSDR 21-24; May 5, 2018 Final Office Action at TSDR 13-48.

³⁴ May 5, 2018 Final Office Action at 34.

³⁵ *Id.* at 35.

³⁶ August 17, 2017 Office Action at TSDR 19-20.

companies.³⁷ That is significant because the car owners, system installers, and repairers who install systems sold under the ID.IGNITION SYSTEMS mark and seek replacement parts for those systems may do so from companies other than those who produce the systems. We find that the third *DuPont* factor supports a finding of a likelihood of confusion.

C. Sophistication of Purchasers

The fourth *DuPont* factor considers “the conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *Stone Lion*, 110 USPQ2d at 1162 (quoting *DuPont*, 177 USPQ at 567). Our analysis of this factor must “be based ‘on the least sophisticated potential purchasers’” of the relevant goods. *Stone Lion*, 110 USPQ2d at 1163 (quoting *Gen. Mills, Inc. v. Fage Dairy Proc. Indus. S.A.*, 100 USPQ2d 1584, 1600 (TTAB 2011), *judgment set aside on other grounds*, 2014 WL 343267 (TTAB 2014)).

Applicant argues that the customers for its goods are car enthusiasts who use Applicant’s keyless systems to retrofit their classic cars and hot rods, and that such “[p]urchasers with knowledge of how to retrofit a classic car or hot rod with an ignition system have a high level of knowledge with respect to these types of cars and the industry.” 7 TTABVUE 10. According to Applicant, if “a purchase of Applicant’s goods comes into contact with the goods in the cited registration, [the customer is] very knowledgeable in the industry and not likely to believe that goods used for such

³⁷ For example, the producer of the replacement keyfobs sold through the Pep Boys website describes itself as “the leading provider of replacement remote transmitters for factor keyless entry and aftermarket alarm systems.” *Id.*

different purposes in a different industry emanate from the same source merely because the goods both contain wireless transmission technology.” *Id.*

This argument once again is incorrectly premised on extrinsic evidence of the registrant’s actual current use of its mark, rather than on the sophistication of the customers for the goods that are broadly identified in the cited registration as including replacement parts for keyless entry and ignition systems. Nevertheless, we agree that the record suggests that some purchasers of keyless entry and ignition systems and their replacement parts are likely to purchase carefully. The record shows that classic cars and hot rods are high-involvement products owned by car enthusiasts, and that keyless entry and ignition systems for vehicles may cost several hundred dollars.³⁸ Purchasers of the systems themselves are likely to exercise a heightened degree of care in making purchases.

At the same time, however, and not surprisingly, the record suggests that replacement parts for such systems are considerably less expensive.³⁹ Owners or repairers of keyless entry and ignition systems who seek replacement wireless transmitters and receivers or electronic signal receivers for the systems may not exercise the same high degree of care as would be exercised in the original purchase of the systems themselves. *Cf. FCA US*, 126 USPQ2d at 1224 (finding that customers

³⁸ May 5, 2018 Final Office Action at TSDR 13-20 (offering iKey systems “From \$599); *id.* at 21-22 (offering Electric Life system for \$117.30); *id.* at 23-24 (offering Flaming River system for \$798.47); *id.* at 35-44 (offering Ron Francis Wiring system for \$649.95); 4 TTABVUE 13 (October 31, 2018 Request for Reconsideration) (offering Applicant’s systems for between \$330 and \$740).

³⁹ August 17, 2017 Office Action at TSDR 19-20 (offering replacement keyfob for various vehicles for \$49.99).

for the applicant’s “automobiles, structural parts, trim and badges” would “likely exercise care in purchasing Applicant’s cars, with high attention to the source of the goods, but less care (although still elevated care) in purchasing replacement parts or trim”). We find that the least sophisticated potential purchasers of replacement wireless transmitters and receivers or electronic signal receivers for keyless entry and ignition systems would likely exercise more than ordinary care in the purchase decision. The fourth *DuPont* factor thus weighs slightly against a finding of likelihood of confusion.

D. Balancing the *DuPont* Factors

Three of the four pertinent *DuPont* factors support a finding of a likelihood of confusion: The marks are similar, the goods are related, and the channels of trade and classes of purchasers overlap. The least sophisticated potential purchasers of replacement parts for the goods identified in the application are likely to exercise an elevated degree of care in the purchase decision, but that it not enough to render confusion unlikely in view of the other factors, especially given that the record is devoid of evidence of third-party use or registration of ID-formative marks for the subject goods that might show that consumers can distinguish between the marks on the basis of the modest differences between them. We find that a consumer or repairer of a keyless entry and ignition system for classic cars and hot rods sold under the ID.IGNITION SYSTEMS mark who is exposed to replacement “wireless transmitters

and receivers for use with vehicles” sold under the  **I.D. Systems** mark is likely to believe mistakenly that those replacement parts originate with, or are

sponsored or authorized by, the producer of the ID.IGNITION SYSTEMS system. For the above reasons, we conclude that Applicant's applied-for mark, as used in connection with the goods identified in the application, so resembles the cited registered mark as to be likely to cause confusion or mistake, or to deceive, under Section 2(d) of the Trademark Act.

Decision: The refusal to register is affirmed.