

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 16, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Ruster Sports, LLC*  
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Serial No. 88011946  
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Douglas W. Friman of Friman Law Firm PLLC,  
for Ruster Sports, LLC.

Elizabeth A. O'Brien, Trademark Examining Attorney, Law Office 105,  
Jennifer Williston, Managing Attorney.

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Before Wellington, Larkin, and Dunn,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Ruster Sports, LLC (Applicant) seeks registration on the Principal Register of the mark DIMOND (standard characters) for “bicycle frames, not including bicycle parts” in International Class 12.<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, as applied to the goods identified in the application, so resembles the registered marks

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<sup>1</sup> Application Serial No. 88011946 filed June 22, 2018, based upon Applicant’s allegation of July 24, 2011 as its dates of first use anywhere and in commerce.

DIAMOND (standard characters)<sup>2</sup> and **DIAMOND** (stylized form),<sup>3</sup> owned by the same entity (Registrant) and both for “bicycle chains,” on the Principal Register, as to be likely to cause confusion, to cause mistake, or to deceive.<sup>4</sup> In our analysis, we will rely principally on the standard character registration.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board.<sup>5</sup> We affirm the refusal to register.

### **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

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<sup>2</sup> Registration No. 0625279 issued April 17, 1956, renewed. The registration also includes “motorcycle chains, conveyor chains and parts thereof, and chain type flexible shaft-couplings and parts thereof,” but these goods were not cited as a Section 2(d) bar.

<sup>3</sup> Registration No. 0211419 issued April 13, 1926, renewed. The registration also includes “chains, machine-made chains, motorcycle chains, automobile chains, chain parts, roller links, and connecting links,” but these goods were not cited as a Section 2(d) bar.

<sup>4</sup> Under the current WIPO International Classification system, “bicycle chains” are classified in International Class 12. Because of the age of the registrations, the classification of the goods reflects the initial classification under the U.S. system in effect until September 1, 1973. *See* Trademark Manual of Examining Procedure (TMEP) §1401.02 (2018) (“The prior United States classification continues to govern for all statutory purposes for trademark applications filed on or before August 31, 1973, and all registrations issued on the basis of an application filed on or before August 31, 1973, unless the owner of the registration amends the registration to adopt international classification. 37 C.F.R. §2.85(b).”). *See also In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (“Classification is solely for the ‘convenience of Patent and Trademark Office administration,’ and ‘is wholly irrelevant to the issue of registrability under section 1052(d)’”) (citations omitted).

<sup>5</sup> A second refusal that the mark is primarily merely a surname was withdrawn. August 21, 2019 Office Action TSDR 5.

The TSDR (Trademark Status and Document Retrieval) citations refer to the downloadable .pdf version of the documents available from the electronic file for the involved application. The TTABVue citations refer to the Board’s electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

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 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. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each relevant *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

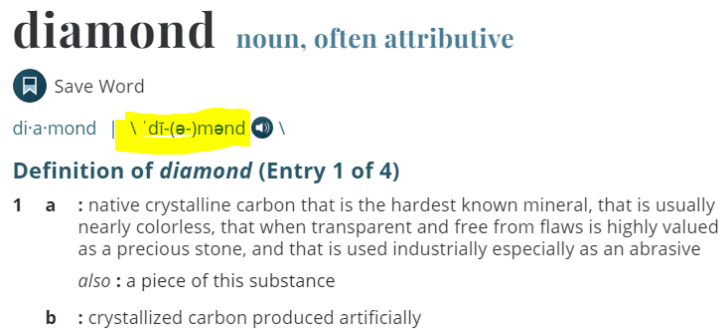
#### **A. Similarity or Dissimilarity of the Marks**

We consider the similarity or dissimilarity of the marks DIMOND and DIAMOND in their entireties as to appearance, sound, connotation, and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, (No. 18–2236) (Fed. Cir. 2019) (*quoting In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

We find the marks DIMOND and DIAMOND to be highly similar. Visually, they are almost the same, with Applicant’s mark sharing six of the seven letters in the registered mark, including the first two and the last four, and the common letters

appearing in the same order. We also note that Applicant’s mark appears in standard characters. This ability to employ any font, size, style, or color when using the mark could result in Applicant’s use of either the same font as the stylized DIAMOND registered mark. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *Davia*, 110 USPQ2d at 1814.

With respect to the sound or pronunciation of the mark, the dictionary entry for the registered term DIAMOND includes a pronunciation guide indicating that the letter A in the term DIAMOND may not be pronounced (**emphasis added**):<sup>6</sup>



The screenshot shows the Merriam-Webster dictionary entry for the word "diamond". The word is in a large, bold, black font, followed by the text "noun, often attributive" in a smaller, blue font. Below the word is a "Save Word" button with a bookmark icon. The pronunciation is given as "di·a·mond" with a vertical bar and a yellow highlight around the syllable "di-(ə)-mend". Below the pronunciation is the heading "Definition of diamond (Entry 1 of 4)". The first definition is marked with a "1" and a bold "a": "native crystalline carbon that is the hardest known mineral, that is usually nearly colorless, that when transparent and free from flaws is highly valued as a precious stone, and that is used industrially especially as an abrasive". Below this is the text "also : a piece of this substance". The second definition is marked with a bold "b": "crystallized carbon produced artificially".

As a result, the terms DIMOND and DIAMOND either are identical aurally, or extremely similar given that both begin with a D and long I sound, and end with the same syllable MOND. Indeed, Applicant admits that “phonetically, the marks would sound similar.”<sup>7</sup>

Because DIAMOND is a common dictionary word, we find its connotation is created by the above definition of a colorless mineral valued as a precious stone. *See*

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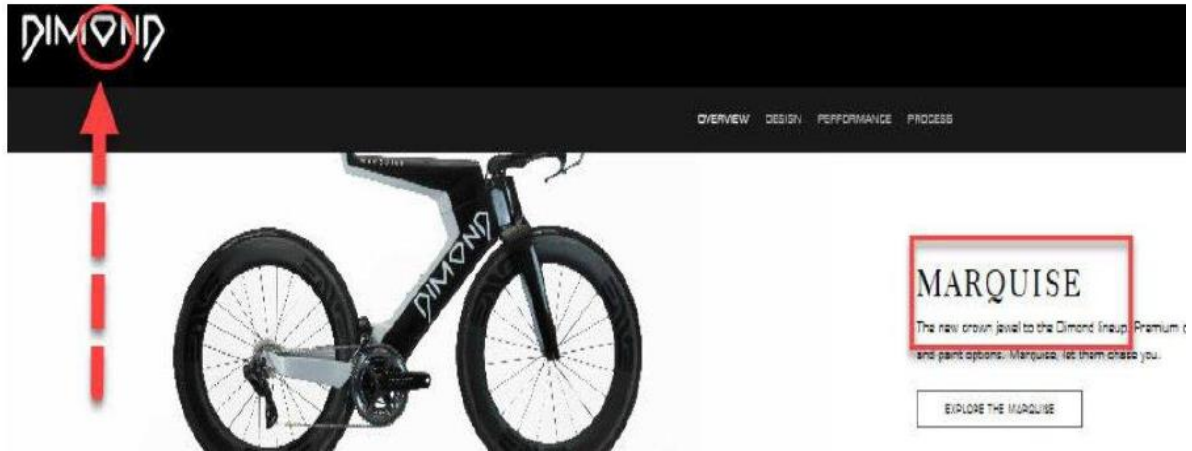
<sup>6</sup> Merriam-Webster, <https://www.merriam-webster.com/dictionary/diamond> and <https://merriam-webster.com/assets/mw/static/pdf/help/guide-to-pronunciation.pdf>. Accessed 29 Oct. 2020. (“Parentheses are used in pronunciations to indicate that whatever is symbolized between them is present in some utterances but not in others...”).

<sup>7</sup> Applicant’s Brief, 9 TTABVUE 7.

*Stratus Networks, Inc. v. UBTA-UBET Communs. Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, \*1 (Fed. Cir. 2020) (“The Board relied on dictionary definitions of the terms ‘stratus’ and ‘strata’ to evaluate similarities in the connotation of each mark.”). With respect to the connotation of DIMOND, based on the visual and phonetic similarities discussed above, the term DIMOND is likely to be perceived as a misspelling of DIAMOND. The Federal Circuit and the Board have found that the phonetic equivalent of a word will be perceived as the known word. *See In re Research & Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) (“[T]here is little room in which to debate the similarity between ROPELOCK and ROPELOK in appearance and sound”); *In re Tapco Int’l Corp.*, 122 USPQ2d 1369, 1372 (TTAB 2017) (“Although we note that KLEER has a non-standard spelling, Applicant has provided no evidence that consumers would perceive KLEER as something other than the phonetic equivalent of ‘clear.’”); *In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017) (“We find that SHARPIN evokes an immediate association with the phonetically-identical and otherwise virtually-identical word ‘sharpen’”); *In re Organik Tech. Inc.*, 41 USPQ2d 1690, 1694 (TTAB 1997) (“ORGANIK, which is the phonetic equivalent of the term ‘organic,’ is deceptive”); *Hi-Shear Corp. v. Nat’l Auto. Parts Ass’n*, 152 USPQ 341, 343 (TTAB 1966) (HI-TORQUE “is the phonetic equivalent of the words ‘HIGH TORQUE’”).

Moreover, while we compare the marks as they are set forth in the application and cited registrations, we note that Applicant placed into the record evidence that Applicant reinforces the DIAMOND connotation of its DIMOND mark with a

diamond shaped display of the letter O in its mark, and references on its website to how diamonds are created and cut:



*Figure 1 Applicant's website attachment to Response<sup>8</sup>*

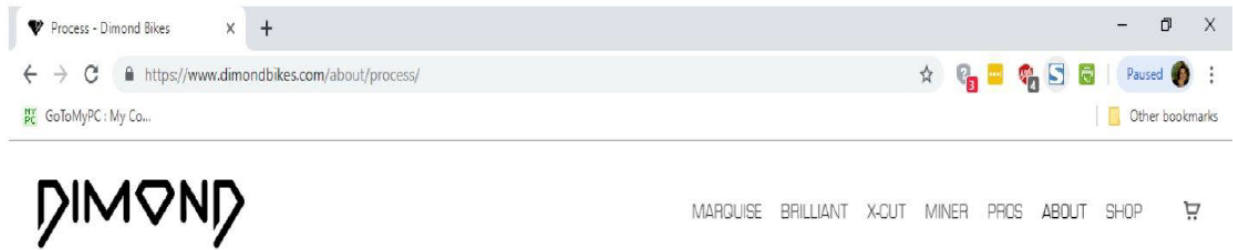


*Figure 2 Applicant's webpage specimen<sup>9</sup>*

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<sup>8</sup> July 18, 2019 Response TDSR 24 (emphasis added by Applicant in Response).

<sup>9</sup> June 22, 2018 Specimen TSDR 1.



*Figure 3 Applicant's webpage attachment to Response<sup>10</sup>*

With respect to the connotation of DIMOND, we also note the “negative evidence” in the form of pages from the dictionary and the Columbia Gazetteer of the World indicating that the term DIMOND does not have any ordinary meaning or geographic significance.<sup>11</sup> See *In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719 (TTAB 2016) (defining “negative evidence” as evidence that a term is not found in reference works). On this record, we find that the term DIMOND will be perceived as a misspelling or phonetic variation of the term DIAMOND.

In so finding, we do not ignore the record evidence that the 2010 U.S. Census and the LEXISNEXIS® surname database show that DIMOND appears as a surname some 2300 times, making it a surname for about .000726% of the U.S. population.<sup>12</sup> This evidence was found to be insufficient to maintain the refusal on the ground that the term DIMOND would be perceived as primarily merely a surname. See footnote

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<sup>10</sup> February 21, 2019 Response TSDR 20. Applicant also submitted Wikipedia pages explaining different cuts of diamond. July 18, 2019 Response TSDR 27-28.

<sup>11</sup> October 22, 2018 Office Action TSDR 85, 87.

<sup>12</sup> October 22, 2018 Office Action TSDR 83; July 18, 2019 Response TSDR 15, 22-23. There also is search summary evidence of 50730 appearances of DIMOND as a surname in a nationwide phone directory, but this evidence was criticized as including duplicative entries. October 22, 2018 Office Action 79-82; July 18, 2019 Response TSDR 15-16.

5, *supra*. We find the surname evidence similarly insufficient to alter the connotation of the term DIMOND as a variant of DIAMOND when applied to Applicant's goods.

We bear in mind that the “marks ‘must be considered . . . in light of the fallibility of 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), and that the proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016). In this case, based on the similarities in appearance, sound, and connotation between the words DIAMOND and DIMOND, we find the marks are overall extremely similar. In view thereof, the similarity of the marks weighs in favor of likelihood of confusion.

**B. Similarity or Dissimilarity of the Goods, Channels of Trade, and Conditions of Sale**

We turn to the *DuPont* factors regarding the similarity or dissimilarity of the respective goods, channels of trade, and conditions of sale. We must consider the goods as they are identified in the application and registration. *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The issue is not whether the goods will be confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same



goods can be related in the mind of the consuming public as to the origin of the goods.”).

It is sufficient that the goods of the applicant and the registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000) (“[A]lthough the services are different, it is reasonable to believe that the general public would likely assume that the origin of the services are the same”). Goods that are “used in combination” are complementary, and “complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion.” *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). “Merely because goods can be used together is not a sufficient basis on which to find them to be complementary. Rather, there must be some showing that customers would seek out both types of goods for the same purpose, for example, making an outfit by matching shoes and clothing, or making a sandwich by combining bread and cheese, to show that the goods are complementary.” *N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1232 (TTAB 2015).

“Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods and services are used together or used by the same purchasers; advertisements showing that the relevant goods and services

are advertised together or sold by the same manufacturer or dealer; or copies of use-based registrations of the same mark for both the applicant's services and the goods listed in the cited registration." *In re Country Oven, Inc.*, 2019 USPQ2d 443903, \*4-5 (TTAB 2019).

Here, Applicant's bicycle frames are complementary goods to the registered bicycle chains, because customers would seek out both bicycle frames and bicycle chains to build or repair a bicycle. The record shows that bicycle chains and bicycle frames are integral components to the operation of the bicycle.<sup>13</sup> Applicant does not dispute this, stating "both the frame and bicycle chain are crucial to the final product of a fully functioning bicycle."<sup>14</sup> This use of different goods to work together in a complementary way toward a common purpose has been found to be a sufficient relationship for purposes of finding a likelihood of confusion. *Octocom Sys.*, 16 USPQ2d at 1788 (modems and computer programs are commonly used together in networking); *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, \*5 (TTAB 2020) (paper tubes and cores, paperboards used for protective packaging; and recycled paperboard complementary to corrugated containers and plastic and wooden containers for transportation of goods for commercial and industrial use because the goods are "used and sold together in packaging products for shipment"); *In re Cook Medical Tech. LLC*, 105 USPQ2d 1377, 1380 (TTAB 2012) (medical devices, namely, guiding sheaths for use in conjunction with access needles, wire guides, and dilators for

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<sup>13</sup> August 21, 2019 Office Action TSDR 185-195.

<sup>14</sup> October 22, 2018 Office Action TSDR 8.

providing access for diagnostic and interventional devices in vascular and non-vascular procedures complementary to catheters because “sheaths may be used in conjunction with access needles, wire guides, and dilators to provide access for such other devices, including catheters.”); *Top Tobacco, LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011) (cigarettes, pocket machines for rolling cigarettes, cigarette tubes, pocket machines for filling cigarette tubes, and filter tips for cigarettes complementary to tobacco because the goods may be used together “to roll or make their own cigarettes.”).

The record includes websites for bicycle stores offering both bicycle chains and bicycle frames, including online bicycle stores (Excel Sports, Competitive Cyclist, City Grounds, and Blue Sky Cycling) and bicycle stores with both physical locations and online ordering (Performance Bicycle, Spokes, Etc., Jenson USA, EVO, Summit Bicycles, and Kozy’s Cyclery).<sup>15</sup>

Applicant contends that goods merely being sold in the same industry is an insufficient relationship for likelihood of confusion,<sup>16</sup> citing *Cooper Indus., Inc. v. Repcoparts USA, Inc.*, 218 USPQ 81, 84 (TTAB 1983) (“mere movement through the same or overlapping channels of trade (as in this case) would not be sufficient if the goods were not likely to reach the same users.”) and *Info. Res. Inc. v. X\*Press Info. Serv.*, 6 USPQ2d 1034 (TTAB 1988) (no likelihood of confusion between services “transmitting news and a variety of general information and data to home and

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<sup>15</sup> October 22, 2018 Office Action, TSDR 12-78; August 21, 2019 Office Action TSDR 10-112.

<sup>16</sup> 9 TTABVUE 9-10.

business computers via satellite and cable television lines” and “information analysis software package namely, computer programs recorded on tapes, cards or disks and a user's reference manual, sold as a unit”). We agree with this point, but find it inapplicable here.

The record shows that the goods involved here are not unrelated within a large industry, and it would not be unlikely for a consumer to encounter them both. Instead, the record shows that bicycle chains and bicycle frames both are necessary parts of any bicycle, and available to the same end consumers, cyclists/bicycle owners, through some of the same channels of commerce, namely stores that specialize in bicycles and parts therefor.

The record also includes 18 current use-based third party registrations indicating that the same mark is used on bicycle chains and bicycle frames (Registration Nos. 4633822 DURBAN, 5324018 ECLYPSE, 5396632 STRIVE, 4584064 MEGATOOTH, 4714792 VP COMPONENTS, 48223280 ELLSWORTH, 4841237 MARS CYCLES, 5375660 JOLLY CYCLE, 5001511 3G BIKES, 5134561 horned cog design, 5077464 BLITZPORT, 5240620 MEMIL, 5524129 CULT, 5615890 POTES, 5674437 CLEVER STANDARD, 5832541 CATAZER, 5820668 EP CYCLING, 5833848 PNW COMPONENTS).<sup>17</sup> “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence

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<sup>17</sup> August 21, 2019 Office Action TSDR 117-184. Applicant notes that, in contrast to the single bicycle product offered by itself and Registrant, these third party registrations generally list a variety of bicycle products, and contends “The lack of variety between goods in each of the two Marks (Applicant and Registrant) denotes a lack of confusion as to whether or not the goods originate from the same source.” 9 TTABVUE 9-10. We disagree, and note the absence of any legal support for this contention.

that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff’d*, 864 F.2d 149 (Fed. Cir. 1988) (unpublished table decision). *Accord In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1737 (TTAB 2018) (third party registrations supported finding “optical lenses, namely, corrective lenses sold through eye care professionals” related to “spectacles, spectacle cases, spectacle lenses, spectacle settings, spectacle frames, glasses for sport, protective helmets for sports, binoculars, parts of these goods included in this class” and “ski glasses, ski goggles, goggles for sports, protective sport helmets; sunglasses, bags specifically adapted for protective helmets”); *In re Sela Prods., LLC*, 107 USPQ2d 1580, 1586 (TTAB 2013) (third party registrations supported finding “surge protector” related to “audio and video cables and other audio and video accessories”); *In re G.B.I. Tile and Stone*, 92 USPQ2d 1366, 1369 (TTAB 2009) (third party registrations supported finding “roofing tiles and trim” related to “stones, ceramic floor tiles, porcelain floor tiles”).

Applicant does not lessen the probative value of the record evidence with its observation that the bicycle store websites do not show bicycle chains and bicycle frames under the same mark.<sup>18</sup> As set forth above, the record includes evidence that that the same mark is registered by the same owner for both bicycle chains and

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<sup>18</sup> 9 TTABVUE 8.

bicycle frames, and the same purchaser will encounter the marks on the bicycle frames and chains when shopping in a bicycle store. More is not necessary.

To the extent that Applicant submits pages from its own and Registrant's websites, and argues that the evidence demonstrates different channels of trade and sales conditions, Applicant mistakes the relevant inquiry. Like our analysis of the similarity or dissimilarity of the goods, we assess similarities in the channels of trade and conditions of sale based on the identifications of goods in the application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014). As a result, we may not consider evidence of how Applicant and Registrant are actually offering their goods in the marketplace. *Id.*; *Detroit Athletic Co.*, 128 USPQ2d at 1052.

More specifically, based on the unrestricted identification of "bicycle frames," we cannot and do not address only the specific trade channels and sales conditions for Applicant's "custom, high-end bicycle frames for high income bicycle enthusiasts and triathletes concerned with performance and comfort."<sup>19</sup> Similarly, based on the unrestricted identification of "bicycle chains," we cannot and do not address only bicycle chains sold only to distributors (as opposed to retailers or consumers).<sup>20</sup>

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<sup>19</sup> 9 TTABVUE 12.

<sup>20</sup> 9 TTABVUE 10. To the extent that Applicant states that Registrant is "not an online bicycle retailer and is instead, in the industrial chain manufacturing business," this is not a limitation on trade channels. *Id.* at 12. The presence of non-bicycle goods in the identification is not itself a restriction of the listed "bicycle chains." The industrial chains listed in the registrations were not cited as a Section 2(d) bar. If Applicant contends that registrant has ceased use on bicycle chains, Applicant's remedy was to seek partial cancellation of the registration as to bicycle chains.

Instead, we address all trade channels and sales conditions for the average purchaser of bicycle parts. The record evidence shows that bicycle chains range in cost from \$10 to \$150, and bicycle frames range in cost from \$260 to \$6500.<sup>21</sup> While frames clearly cost more than chains, the fact that there is a wide range of prices for parts integral to the operation of any bicycle indicates that there also is a wide range of purchasers of bicycle parts.

We find that the similarity of the respective goods, channels of trade, and conditions of sale weigh in favor of finding a likelihood of confusion.

**C. The variety of goods on which a mark is or is not used (house mark, “family” mark, product mark).**

In assessing likelihood of confusion, the Board may consider the variety of goods on which a prior mark is used, because consumers familiar with various goods in a product line, when confronted with new goods bearing another party’s similar mark, would be likely to view the second party’s goods as new products from the prior product line. *See In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, 1774 (TTAB 2014) (“[C]onsumers who may be familiar with various products in the [ ] product line, when confronted with applicant’s mark, would be likely to view the goods marked therewith as additional products from registrant.”); *In re Wilson*, 57 USPQ2d 1863, 1867 (TTAB 2001) (“According to the cited registration, registrant uses its PINE CONE mark on a variety of different fruits and vegetables. We find it likely that purchasers, when encountering additional fruits such as applicant’s marketed

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<sup>21</sup> August 21, 2019 TSDR 34, 45, 50, 91.

under the arbitrary PINE CONE mark, would assume that a source, sponsorship or other connection exists.”).

Here, Applicant makes the novel argument that the converse is true – because Registrant uses its mark only on chains, “it is less likely that a consumer will believe that a different type of good (bicycle frame) is made by the same business, even if the marks may be considered similar.”<sup>22</sup> Applicant has cited no cases, and we are not aware of any, that support this argument. In addition, we find no logic in the argument. As set forth above, there can be multiple relationships between diverse goods which support findings of relatedness and likelihood of confusion, and the relationship between goods which could be presumed to be part of a product line if used with similar marks is just one example. As discussed, the relationship between diverse goods necessary to support a finding of likelihood of confusion exists where the relevant public would likely assume that the origin of the goods are the same.

This factor is neutral.

#### **D. Conclusion**

In conclusion, we have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. We find that Applicant’s mark DIMOND shares visual and aural similarities with, and conveys the same meaning and commercial impression as, the registered standard character mark DIAMOND, that the “bicycle frames” in Applicant’s identification of goods are complementary to, and sold in the same channels of trade as, Registrant’s “bicycle chains,” and that based on the

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<sup>22</sup> 9 TTABVUE 13.



unrestricted identification of goods in both the application and cited standard character mark registration, the goods of the parties may be encountered by the same purchasers for incorporation in, or as part of, the same bicycle.

Insofar as the *DuPont* factors discussed above either are neutral or weigh in favor of finding a likelihood of confusion, we conclude that confusion is likely to occur between Applicant's DIMOND mark for its goods and Registrant's DIAMOND mark for its goods.

## **II. Decision**

The refusal to register Applicant's mark DIMOND is affirmed.