Mailed: November 25, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Jilly Box Inc.

Serial No. 90253914

Laura A. Genovese and Leigha R. Santoro, of K & G Law LLC,
for The Jilly Box Inc.

Jules Dean, Trademark Examining Attorney, Law Office 120,
Joshua Toy, Managing Attorney.

Notice of Correction

Before Dunn, Casagrande, and Lavache, Administrative Trademark Judges.

By Casagrande, Administrative Trademark Judge:

The Board mailed a final decision in this appeal on November 19, 2025. That decision is corrected to add the following sentence at the end of footnote 2: "Applicant disclaims the exclusive right to use BOX apart from the mark as shown." The final decision otherwise remains unchanged. The period for filing any appeal of this opinion continues to run from the mailing date of the original decision.

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In re The Jilly Box Inc.

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Laura A. Genovese and Leigha R. Santoro, of K & G Law LLC,
for The Jilly Box Inc.

Jules Dean, Trademark Examining Attorney, Law Office 120,[1]
Joshua Toy, Managing Attorney.

Before Dunn, Casagrande, and Lavache, Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

The Jilly Box Inc. (Applicant) seeks registration on the Principal Register of the mark THE JILLY BOX (in standard characters) for a wide variety of goods and services falling into fifteen (15) different International Classes.[2] Only a small fraction

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[1] The application was originally assigned to a different examining attorney but was re-assigned twice during prosecution.

[2] Application Ser. No. 90253914 was filed on October 14, 2020, 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, and Section 44(d), 15 U.S.C. § 1126(d), based on Canadian Application 2,030,466. After the Canadian Registration issued, the filing basis was amended to Sections 1(b) and 44(e). Applicant disclaims the exclusive right to use BOX apart from the mark as shown.

of those goods and services are at issue in this appeal, which, as we will explain in the next section, concerns refusals under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), due to likelihood of confusion with two different registered marks.

I. Preliminary matters: the scope of the refusal and this appeal

The June 28, 2024, Final Office Action refused registration only as to the goods in International Class 14 and as to some, but not all, of the services identified in International Class 35.[3] At the same time Applicant appealed this final, partial refusal,[4] it filed a request to divide the application to carve the allowed classes of goods and services out of the original application and place them into a separate application, leaving only the two refused classes of goods and services in the original application.[5] The Office granted the request to divide.[6] This appeal thus concerns only the original application, which now contains only the Class 14 goods and the Class 35 services.

There are two further wrinkles. The June 24, 2024, Final Office Action specified that it was a "partial" refusal as to the services in Class 35 because it pertained only to certain of the identified services. After Applicant filed its appeal brief,[7] the

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[3] *See* June 28, 2024, Final Office Action, at TSDR 3. 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* 1 TTABVUE. 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* Sept. 30, 2024, Request to Divide Application.

[6] *See* Oct. 3, 2024, Notice.

[7] *See* 6 TTABVUE.

Examining Attorney requested a remand to further clarify which services were subject to the partial refusal,[8] which we granted.[9] A Subsequent Final Office Action then clarified that the partial refusal applies only to the following goods and services:

> Class 14: jewellery; curated boxes being kits comprised of jewellery;[10] and
>
> Class 35: subscription services, namely, online retail store services featuring subscription boxes containing clothing and handbags, footwear, fashion accessories in the nature of belts, scarves, shoulder wraps, mittens, gloves and socks and headwear, health and beauty, home décor, technology, fitness and food products; promoting the goods and services of others through the distribution of boxes filled with assorted items in the fields of fashion, health and beauty, home décor, technology, fitness and food products.[11]

The Subsequent Final Office Action based its refusal as to each class on different registered marks. As to the jewelry and related goods in Class 14, the Examining

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8 *See* 8 TTABVUE (request).

9 *See* 9 TTABVUE (order).

10 *See* Apr. 7, 2025, Subsequent Final Office Action, 10 TTABVUE. This represents the totality of goods that have always been identified in Class 14 (and which have been the subject of all Office actions throughout prosecution).

11 *See id.* This represents only a subset of the services in Class 35. Irrespective of how we resolve this appeal, therefore, the following Class 35 services, which are not subject to the partial refusal before us, will necessarily be allowed:

> consumer membership program services, namely, membership club services providing discounts and administrative processing of rebates for the goods and services of others in the fields of fashion, beauty, home décor, fitness and food products; marketing, advertising, and promoting the goods and services of others through the internet and wireless electronic devices; promoting the goods and services of others by providing a website featuring product price-comparison information and reviews, consumer research information about consumer practices and trends, discount information and coupons, and links to the retail websites of others, all in the fields of food, fashion, beauty, home décor, fitness and technology; market analysis and research services, namely, collecting, analyzing, processing and providing customer preference and product usage data to providers of food, fashion, beauty, home décor, fitness products and technology.

Attorney based the refusal on the mark  , which is registered in International Class 14 for "jewelry."[12]

As to the specified subset of services in Class 35, the Examining Attorney refused registration in light of a prior registration of the standard-character mark JILLY'S MOM MADE THAT, which identifies the following services in Class 35:

> On-line retail store services featuring woman, teens, and children's apparel, namely, shirts, long sleeve shirts, short sleeve shirts, tank tops, sweaters, dresses, pants, capris, jackets, footwear, hats and caps, children's and infant's apparel, namely, shirts, tank tops, jackets, pants, capris, jumpers, overall sleepwear, pajamas, rompers and one-piece garments, bodysuits, baby bibs not of paper, children's headwear, gloves for apparel, hats for infants, one piece garment for infants and toddlers, shirts for infants, babies, toddlers and children, sleeping garments, shoes, sandals, boots, purses, clutches, handbags, all-purpose carrying bags, wallets, and plush toys.[13]

Briefing then continued. Applicant filed a Supplemental Brief,[14] followed by the Examining Attorney's brief[15] and, finally, Applicant's reply brief.[16] The appeal is now ready for decision.

For the reasons set forth below, we affirm the refusal as to the Class 14 goods but reverse the partial refusal as to the specified Class 35 services.

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[12] Reg. No. 3803014 was registered on June 15, 2010, and is renewed. The registration describes the mark as follows: "The mark consists of 'jillijewels' written in a cursive font with asterisks over the two 'j"s and a curlicue under the first 'e' in the word 'jillijewels'."

[13] Reg. No. 5320185 was registered on October 31, 2017 (Section 8 use declaration accepted).

[14] *See* 12 TTABVUE.

[15] *See* 14 TTABVUE.

[16] *See* 15 TTABVUE.

II. Analysis

A. Section 2(d) generally

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. DuPont 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 *DuPont* 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).

B. Comparison of the goods, trade channels, and classes of customers

One of the factors relevant to likelihood of confusion is "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." *DuPont*, 476 F.2d at 1361. This, along with the comparison of the marks, is usually a key consideration. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

The Examining Attorney argues that, because the Applicant lists "jewellry" and the cited registration  also lists jewelry, the goods are identical to that extent.[17] As to the Class 35 services, the Examining Attorney argues that the services in the application are related to the services in the cited registration for JILLY'S MOM MADE THAT because the evidence of record shows "shows that the same entities commonly providing the relevant services under the same mark and

[17] *See* 14 TTABVUE 8. The Examining Attorney also argues that the remaining goods in the application ("curated boxes being kits comprised of jewellery") are related to the goods in the cited registration. *See id.* Where, as here, the evidence shows that third parties sell both goods in the application and goods in the cited registration under the same marks, that bears on whether the consuming public views the goods as related in the sense that they may emanate from the same source. *See, e.g.*, *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024; *Charger Ventures*, 64 F.4th at 1382; *In re Detroit Athl. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002). As explained *infra*, however, this argument is not critical because our decision is based on the fact that the application and registration both list jewelry.

via the same trade channels." We agree that the record indeed supports these findings.[18]

Two more relevant factors look to determine the extent to which the trade channels and classes of customers for the goods or services are similar or dissimilar. *See DuPont*, 476 F.2d at 1361 (listing "[t]he similarity or dissimilarity of established, likely-to-continue trade channels" as well as "buyers to whom sales are made"). Here, as to the Class 14 "jewelry" goods, the Examining Attorney relies on the legal presumption that, to the extent the goods are identical, then, absent any restriction in the application or registration, the trade channels and classes of customers, too, are identical.[19] *See, e.g.*, *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012). As to the rest of the remaining Class 14 goods in the application and the Class 35 services, the Examining Attorney pointed to: (1) several third-party websites that offer both jewelry (as in the '014 Registration) and jewelry kits (as in the application), and (2) several other third-party websites that offer fashion subscription-box services (as in the application) and online retail store services for the goods that come in the subscription boxes (as in the '185 Registration).[20] This shows overlap in the channels of trade and classes of customers between Applicant's goods and services and those in the two cited registrations. *See, e.g.*, *In re Dare Foods Inc.*, No. 88758625, 2022 WL 970319, at *4 (TTAB 2022) ("[T]he Examining Attorney has introduced evidence that

[18] *See id.* at 9 (listing third-party websites in the record).

[19] *See id.*

[20] *See id.* at 8-9.

goods related to Applicant's goods are offered for sale on websites of third-party food retailers that also offer goods identified in the cited registration. This evidence supports a finding that Applicant's goods and Registrant's goods are offered in common channels of trade to overlapping purchasers.").

Applicant's appeal brief acknowledged that the similarity of the goods and services is a factor "of particular relevance," but noted that even though Applicant and the owner of the '014 Registration both offer jewelry under their marks, confusion was nevertheless unlikely due to "those factors labeled as (1) and (6) above and discussed further below."[21] Thus, Applicant's appeal brief did not contest the Examining Attorney's evidence, arguments, or findings on the second *DuPont* factor as to either class, nor as to the channels of trade or classes of customers (or any other *DuPont* factor). Nor did its "Supplemental Appeal Brief" filed following the remand.[22]

In its reply brief—Applicant's third and final brief in this appeal—Applicant, for the first time, contests the Examining Attorney's finding that the goods are similar and the trade channels are the same. Citing a few of the webpages the Examining Attorney placed in the record, Applicant urges that "the foregoing evidence does not demonstrate that the same entities commonly provide the relevant goods under the same mark or through identical trade channels."[23] Though Applicant does not expressly indicate to which cited registration this argument pertains, the websites

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[21] *See* 6 TTABVUE 12. Applicant's appeal brief made no mention, as to the '185 Registration, of the findings as to the similarity of the services, the trade channels, and classes of customers.

[22] *See* 12 TTABVUE.

[23] *See* 15 TTABVUE 5-6.

Applicant identified were cited by the Examining Attorney solely with respect to the '014 Registration for jewelry, so we take Applicant's reply brief argument to be directed to likelihood of confusion only as to the Class 14 goods.

We hold that Applicant forfeited its right to contest these findings because it did not discuss them in its appeal brief. Issues raised first in a reply brief are not normally considered because the Examining Attorney does not have an opportunity to respond. *See, e.g.*, *Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1375 n.4 (Fed. Cir. 2005) (refusing to consider arguments raised for the first time in reply brief and not addressed in opening brief as those arguments are considered to have been waived); *see also* TBMP § 1203.02(g) ("If an applicant, in its appeal brief, does not assert an argument made during prosecution, it may be deemed waived by the Board."); *cf. In re Princeton Equity Group LLC*, No. 97397212, 2025 WL 1638891, at *2-3 (TTAB 2025) (statement in appeal brief that purports to incorporate-by-reference arguments made in prosecution deemed to forfeit any issues not otherwise developed in the brief). *See generally In re Google Techs. Holdings, LLC*, 980 F.3d 858, 862-63 (Fed. Cir. 2020) (argument not timely raised is forfeited). We find forfeiture especially applicable here, where Applicant's opening appeal brief affirmatively acknowledged the finding of similarity of the goods and services but then contested only the first and sixth *DuPont* factors, arguing that they collectively outweighed the similarity of the goods and services.

Even if Applicant had contested these findings in its appeal brief, the argument gets Applicant nowhere. As to the Class 14 goods and the '014 Registration, the

evidence shows that the goods are indeed in part identical. It is well-settled that, where confusion is likely as to even one of the kinds of goods listed in an application, the application is refused as to the entire class.[24] *See, e.g.*, *SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336 (CCPA 1981); *Toro Co. v. Hardigg Indus., Inc.*, 549 F.2d 785, 790 (CCPA 1977); *Shunk Mfg. Co. v. Tarrant Mfg. Co.*, 318 F.2d 328, 330 (CCPA 1963). Thus, consideration of these additional third-party websites is not critical to our resolution of this appeal.

In sum, we find that Applicant, by failing to contest the Examining Attorney's findings on the similarity of the goods/services, trade channels, and classes of customers as to the '185 Registration, forfeited its right to contest these findings. As to the '014 Registration, we find that Applicant forfeited its right to contest these findings as well. In any event, we agree with the Examining Attorney's finding because the record amply supports them. In the final weighing of the factors, these findings will support a conclusion that confusion is likely.

We will now proceed to the two factors that Applicant properly contests and upon which it trains most of its fire.

[24] An examining attorney may, however, as the Examining Attorney did here as to the '185 Registration, carve out certain goods or services within a class from a refusal. The Examining Attorney did not do that as to the refusal based on the '014 Registration, however.

C. The effect of third-party uses and registrations of marks containing the name JILL or a variant

Applicant argues that "consumers are used to differentiating between marks that consist of common first names," saying that it "provided charts containing numerous registered marks for goods in Class 14 and services in Class 35."[25] The pages Applicant cites contain print-outs of registrations for marks containing or consisting of the names Sara and Stella.[26] Looking beyond the cited pages, we also see other print-outs for a few registrations containing or consisting of the names Emma, Jennifer, Lani, Nicole, and Charlotte. Applicant also points to "another chart of registered marks incorporating the terms JILLY/JILL/JILLIAN."[27]

DuPont lists as a potentially relevant factor "[t]he number and nature of similar marks in use on similar goods." 476 F.2d at 1371. We do not find Applicant's arguments about marks that do not consist of or contain the name "Jill" or some variant (i.e., its argument concerning marks with other female first names) to be persuasive because those marks are not similar (except in an abstract sense) to the marks at issue here, which all contain JILLY or JILLI. Generally, the third-party marks also must be at least arguably as similar to the cited registrations as Applicant's mark. *See, e.g.*, *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 675 (Fed. Cir. 1984); *Palisades Pageants, Inc. v. Miss Am. Pageant*, 442

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[25] *See* 6 TTABVUE 18 (citing Sept. 17, 2021 Response to Office Action, at TSDR 109-17).

[26] We note the chart to which Applicant appears to refer is in the cited Response at TSDR 143-49.

[27] *See* 6 TTABVUE 19.

F.2d 1385, 1388 (CCPA 1971).[28] Thus, the third-party marks that contain Jill or some variant are substantially more pertinent than the other first names, because such marks have an element in common with Applicant's mark and the marks in both cited registrations.

If there are a significant number of such registrations, that may show that the common element has some degree of conceptual weakness. For example, the existence of several such registrations may indicate that the term at issue has a descriptive or suggestive connotation as to the goods of services at issue. As the Federal Circuit said in *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355 (Fed. Cir. 2023):

> The existence of third-party registrations on similar goods can bear on a mark's conceptual strength. Specifically, third-party registrations containing an element that is common to both the opposer's and the applicant's marks can show that that element has "a normally understood and well-recognized descriptive or suggestive meaning." Accordingly, we have considered the existence of third-party registrations under the sixth *DuPont* factor.

Id. at 1363; *see also Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334,1339 (Fed. Cir. 2015) ("Third party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood

[28] *See also In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (the USPTO "must decide each case on its own merits … [e]ven if some prior registrations had some characteristics similar to" Applicant's mark) (citation omitted); *see also In re Boulevard Ent., Inc.*, 334 F.3d 1336, 1343 (Fed. Cir. 2003) ("The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the agency must forgo applying that standard in all other cases."). We decide cases on the marks, relevant evidence, and factors before us, not based on abstract analogies to other registrations not before us that issued for other marks, at other times, in other circumstances, and on unknown other records. *See, e.g.*, *In re Harris-Intertype Corp.*, 518 F.2d 629, 632 (CCPA 1975); *In re Cooper*, 254 F.2d 611, 617 (CCPA 1958).

and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.") (citation omitted). Third party registrations thus can function like a dictionary of sorts, shedding light on what the term at issue may mean to market participants. *See, e.g.*, *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 928 (CCPA 1978) ("We find no error in the citation of nine third-party registrations primarily to show the meaning of ('zing') in the same way that dictionaries are used.") (cleaned up; citation omitted); *accord Specialty Brands*, 748 F.2d at 675; *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917 (CCPA 1976).

But use as a dictionary to show that JILL has some descriptive or suggestive significance in the fields of jewelry or online retail apparel store services is not the purpose for which Applicant uses these third-party registrations. Rather, it argues that the name "Jill" and variants of it "are so commonly **used**, consumers will focus on other aspects of the marks (emphasis added)" to differentiate source.[29] It is well-settled, however, that registrations aren't evidence of use. *See, e.g.*, *In re Mighty Leaf Tea*, 601 F.3d 1342, 1347 (Fed. Cir. 2010); *Tektronix*, 534 F.2d at 917; *Conde Nast Publications, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 1406-07 (CCPA 1975); *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 1005 (CCPA 1973); *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406 (CCPA 1973). Evidence of use is evidence of use. *See* Trademark Rule 2.122(b) (2), 37 C.F.R. § 2.122(b) (2) ("The allegation in an application for registration, or in a registration, of a date of use is not evidence on

[29] *See id.* at 20.

behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as exhibits during the period for the taking of testimony. Statements made in an affidavit or declaration in the file of an application for registration, or in the file of a registration, are not testimony on behalf of the applicant or registrant.").

Applicant notes that it did provide evidence of use for "a few" of the third party-registrations it listed, pointing us to its Request for Reconsideration.[30] Third-party use shows something somewhat different from third-party registrations. Third-party usages of similar marks on similar goods, if common enough, "can show that customers have been educated to distinguish between different marks on the basis of minute distinctions." *Jack Wolfskin Ausrustung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) (citation omitted).

For us to find weakness of the cited marks for their respective goods or services, the third-party registrations and use evidence must be in the same market as the goods or services in the cited registration. *See, e.g.*, *Nat'l Cable Tel. Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1580 (Fed. Cir. 1991) ("None of the third party marks and uses of ACE made of record are nearly as closely related to the activities of the parties as the virtually identical uses of the parties are to each other.") (citation omitted), *cited in Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d

[30] *See id.* at 20.

1315, 1325-26 (Fed. Cir. 2018)). In its Request for Reconsideration, Applicant supplied screenshots of webpages using the following marks in connection with the following goods/services: SUPER JOCK 'N JILL (online retail sales of insoles, sunglasses, socks);[31] JILL MCGOWAN (online retail sales of clothing);[32] JILL ROBERTS (online retail sales of clothing);[33] J. JILL (online retail sales of jewelry, clothing);[34] JILL PLATNER (online retail sales of jewelry and accessories);[35] and JILL RENO COLLECTION (online retail sales of jewelry).[36] Applicant does not specify which of the two classes to which its third-party use evidence supposedly pertains, leaving us to piece that together. The first four marks listed above appear pertinent to the Class 35 services refusal; the last three are pertinent to the Class 14 refusal (the J. JILL webpages are pertinent to both).

In addition, as mentioned, the third-party marks also must be at least arguably as similar to the cited registrations as Applicant's mark. *See, e.g.*, *Specialty Brands*, 748 F.2d at 675; *Palisades Pageants*, 442 F.2d at 1388. While the marks cited by Applicant all contain the term JILL, none contain the variant at issue here, JILLY or JILLI-. That detracts a bit from their probative value.

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[31] *See* Sept. 30, 2024, Request for Reconsideration, at TSDR 290.

[32] *See id.* at 291.

[33] *See id.* at 296.

[34] *See id.* at 294-95.

[35] *See id.* at 292.

[36] *See id.* at 293.

Overall, Applicant's limited third-party use evidence has some impact on the sixth factor for each class, but not a lot.

Applicant supplies substantially more third-party registrations than it does instances of third-party use. As mentioned, third-party registrations of similar marks usually are of limited utility, acting as a practical dictionary that can illuminate whether the term at issue has a descriptive or suggestive meaning in a particular field. But, again, that's not what Applicant argues. Applicant points to these registrations and argues that "JILL" marks "are so commonly used, consumers will focus on other aspects of the marks" to distinguish sources.[37]

Sometimes when the number of relevant third-party registrations is large enough, we can take that into account as evidence of consumer exposure, even in the absence of the extent to which consumers have actually been exposed to the specific marks. That is because, when the number of active, use-based third-party registrations gets high enough, it's hard to avoid the inference that consumers **must** have been exposed to some degree to use of at least some of these marks. That is what we understand the Federal Circuit to have meant when it said that evidence of that magnitude can be "powerful on its face" even when evidence of use is of the marks in those registrations is deficient or lacking. *See Jack Wolfskin*, 797 F.3d at 1373-74; *Juice Generation*, 794 F.3d at 1339. When arguments like the one Applicant makes are raised, the issue is whether the registration evidence is numerous and pertinent

[37] 6 TTABVUE 20.

enough to be "powerful on its face" under the sixth factor even without evidence of use.

To illustrate the quantity and quality of evidence that elicited the Court's statements that such evidence was "powerful on its face" in the *Jack Wolfskin* and *Juice Generation* cases, an examination of the evidentiary records before the Board in those case reveals that: in *Jack Wolfskin*, where both marks had paw prints in them, there were, by our count, 94 third-party registrations and 28 third-party uses of paw prints in the record, which the Court characterized variously as "ubiquitous", "considerable", and "extensive"; and, in *Juice Generation*, where both parties' marks had the words PEACE and LOVE in them, there were 12 third-party registrations and 36 third-party uses of marks that contained PEACE and LOVE (usually with a food or drink item) in the relevant market.

With that understanding we now turn to the third-party registrations and Applicant's argument about how consumers react to them. At the threshold, Applicant's brief does not list the registrations to which its third-party registration argument refers. Further, the only pages it cites are to lists it made in arguments in prosecution. But charts or list of registrations aren't evidence. *See, e.g.*, *In re Star Belly Stitcher, Inc.*, No. 85247730, 2013 WL 4635976, at *6 (TTAB 2013) ("Mere listings of registrations [in a brief] are not sufficient to make the registrations of record.") (citation omitted); *accord In re Compania de Licores Internacionales S.A.*, No. 75010230, 2012 WL 1267898, at *2 (TTAB 2012); *In re Hoefflin*, No. 77632391, 2010 WL 5191373, at *3 (TTAB 2010); *In re Fiesta Palms, LLC*, No. 76595049, 2007

WL 950952, at *6 (TTAB 2007). Even though we aren't required to scour the record to see if there is evidence that an applicant didn't direct us to that may support it, we did so anyway here. In so doing we see that Applicant also provided the status and title copies of these registrations from the USPTO's TSDR database. We will now summarize them. And unlike Applicant, we will organize them as to each class, since we have to assess the refusals as to each class separately.

As to the Class 14 "jewellry" refusal in light of the registration for 

, Applicant presented the following registrations for goods including jewelry: JILL CODE, Reg. No. 5919117;[38] JILL MILAN, Reg. No. 4132402;[39] JILL PLATNER, Reg. No. 3016955;[40] J. JILL, Reg. No. 2549252;[41] JILL RENO, Reg. No. 6676025;[42] PLANET JILL, Reg. No. 7298036;[43] JILLIAN ABBOUD FINE JEWELRY, Reg. No. 5833502;[44] and 

, Reg. No. 6270890.[45] As with the examples of third-

[38] Sept. 17, 2021, Response to Office Action, at TSDR 48-49.

[39] *Id.* at 50.

[40] *Id.* at 51-52.

[41] *Id.* at 55-56.

[42] Sept. 30, 2024, Request for Reconsideration, at TSDR 26-27.

[43] *Id.* at 57-59.

[44] *Id.* at 62-63.

[45] *Id.* at 64-66. Though this registration does not identify "jewelry" as such, it lists "wrist key chains" and key chain bracelets," which are a subset of jewelry. Further, we take notice that a few other jewelry registrations that Applicant listed (JILL STUART, Reg. No. 2808987; JILL MILAN, Reg. No. 4503275; and VANJILL, Reg. No. 6738492) have been cancelled. Cancelled registrations lack probative value for this purpose. *See, e.g.*, *In re Virtual Independent Paralegals, LLC*, No. 86947786, 2019 WL 1453034, at *10 (TTAB 2019) ("A cancelled registration is not evidence of any existing rights in the mark.") (citation omitted);

party use, none of these registrations are for the variant JILLY or JILLI-. And unlike the marks THE JILLY BOX and JILLIJEWELS, which essentially comprise a first name (JILLY or JILLI-)[46] followed by a descriptive or generic term (BOX or JEWELS), most of these third-party marks have a last name (or in the case of J. JILL, a preceding initial). Still, taken together, we think that this shows that, as to jewelry, there may be some modest degree of weakness as to marks comprising the name JILL or clear variants thereof like JILLY or JILLI. As to the Class 14 refusal for jewelry, this will weigh in Applicant's favor in the final weighing. How much, we can't say in the abstract. We will make that determination when, in our last step under *DuPont*, we weigh it together with the other findings.[47]

As to the refusal pertaining to Applicant's Class 35 services, based on the '185 Registration, which covers online retail store services including clothing, Applicant provided evidence of the following live[48] registrations for retail clothing store services

In re Kysela Pere et Fils, Ltd., 2011 WL 1399224, at *2 (TTAB 2011) ("Dead or cancelled registrations have no probative value at all.") (cleaned up). If a registration is properly made of record, we may, and frequently do, take judicial notice of any pertinent status changes to such registrations. *See, e.g.*, *In re Audemars Piguet Holding SA*, No. 90045780, 2025 WL 21318, at *21 n.103 (TTAB 2025); *In re Wilson*, No. 75285881, 2001 WL 58395, at *6 n.15 (TTAB 2001).

[46] It's not clear to us that JILZARAH is a name at all.

[47] In particular, the impact of the evidence on the sixth factor depends on how similar the applicant's mark is to the mark in a cited registration. *See, e.g.*, *Specialty Brands*, 748 F.2d at 675; *Palisades Pageants*, 442 F.2d at 1388. The more similar the compared marks, the less impact the sixth factor may have. But the greater the dissimilarities, the more impact the same showing on the sixth factor may will have on the final weighing.

[48] One of the registrations Applicant listed was cancelled on Nov. 22, 2024, for failure to file required renewal documents (Reg. No. 5465450, *see* Sept. 30, 2024, Request for Reconsideration, at TSDR 270-71).

that sell, inter alia, clothing items: J.JILL, Reg. No. 5845166;[49] YOU'RE HOME WITH JILL, Reg. No. 4529226;[50] JILL'S CONSIGNMENT, Reg. No. 4183160;[51] PURE JILL, Reg. No. 3399428;[52] JILL STUART, Reg. No. 4578238;[53] JACK AND JILL, Reg. Nos. 7292728 & 5961893;[54] and JILL ROBERTS, Reg. No. 7424882.[55] Broadening beyond retail store services, Applicant also listed quite a few registrations for clothing goods. These registrations for goods are slightly less pertinent than the registrations for retail store services selling clothing, but they do have some probative value. They are: JILLYEOR, Reg. No. 7387385;[56] CHILLY JILLY, Reg. No. 3304431;[57] MZJILL, Reg. No. 6400272;[58] JILL TAKAHASHI, Reg. No. 4971368;[59] JILLBANG, Reg. No. 6022592;[60] JILL MARTIN, Reg. No. 7189882;[61]

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[49] Sept. 17, 2021, Response to Office Action, at TSDR 127-28.

[50] *Id.* at 131-32. Note that this registration does not mention clothing but only retail store services "in the field of general merchandise."

[51] *Id.* at 133-34.

[52] *Id.* at 135-36. There's also a clothing registration for PURE JILL, *see id.* at 150-65, but since it's the same third party, we won't count it twice.

[53] Sept. 30, 2024, Request for Reconsideration, at TSDR 246-48 (this registration mentions only cosmetics).

[54] *Id.* at 194-200. This registration (and stylized version with a design) are for "Retail store services featuring sex toys, personal lubricants, adult clothing, sexual health and wellness products, novelty items, and shoes." Adult clothing appears to be a type of clothing.

[55] *Id.* at 258-61 (includes online retail).

[56] *Id.* at 105-06.

[57] *Id.* at 107-09.

[58] *Id.* at 110-11.

[59] *Id.* at 112-14.

[60] *Id.* at 115-16. Applicant also submitted another registration of this mark for other goods. We will not list it separately since it reflects one third-party source, not multiple sources.

[61] *Id.* at 117-19.

MATERIALJILL, Reg. No. 6464959;[62] JACK & JILL, Reg. No. 6972483;[63] J. JILL, Reg. No. 2226071;[64] JILL DENISE, Reg. No. 7146988;[65] JIL SANDER, Reg. No. 1534919;[66] JillPeri, Reg. No. 6694819;[67] JILLUMI, Reg. No. 6589884;[68] JILL MCGOWAN, Reg. No. 3837648;[69] JIMANDJILLY, Reg. No. 6620732;[70] and JILLSKY, Reg. No. 5833884[71]. Likewise, a few registrations for selling handbags, which are part of the '185 Registration, are also relevant: JILL JOANNE (and JILLJOANNE.COM) for "Purses and handbags made of leather and cloth," Reg. Nos. 4154791 and 4124460;[72] JILL MILAN for "All-purpose carrying bags; Briefcases; Handbags; Overnight bags; Purses; Tote bags; Wallets," Reg. No. 4132402;[73] JillyBeans Shoes for footwear, Reg. No. 7284140;[74] SUPER JOCK 'N JILL for a retail sporting goods store,

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62 *Id.* at 121-23.

63 *Id.* at 124-25. Applicant submitted a second registration for this same source, but we won't count this source twice.

64 *Id.* at 126-45.

65 *Id.* at 148-49.

66 *Id.* at 166-73. We do not count the stylized registration for this mark for the same goods, as it reflects the same third-party source, not multiple third-party sources.

67 *Id.* at 178-80.

68 *Id.* at 181-83.

69 *Id.* at 184-86.

70 *Id.* at 189-90.

71 *Id.* at 191-93.

72 *Id.* at 67-70, 88-90.

73 *Id.* at 91-93.

74 *Id.* at 229-31.

Reg. No. 2203983;[75] and CHRISTIE & JILL for handbags and footwear, Reg. No. 6038683.[76]

Many of these are combined with other distinctive terms, and that detracts somewhat from their probative value. Still, taken together with the few instances of third-party use we listed above, this is a relatively stronger showing than Applicant made as to the cited registration for Class 14 goods. This will weigh in Applicant's favor when we conduct the final weighing of the relevant factors as to the Class 35 refusal in light of the '185 Registration. As noted, we can't determine how heavily this will weigh in the abstract. We will have to wait until the last step where we weigh all the factors together and see how they might interact with one another.

D. Comparison of the marks

We finally come to "[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." *DuPont*, 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*, 544 F.2d at 1103. "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

[75] *Id.* at 249-51. We take notice that retail sporting goods stores typically sell sporting clothing.

[76] *Id.* at 97-101. Two additional registrations, *see id.* at 102-04, 187-88, were cancelled and so are of no probative value. Another is simply too far afield from the universe of relevant goods or services (DR. JILL HEALTH for retail store services for various specific types of goods not including jewelry, clothing, or other goods listed in the '185 Registration or application, *id.* at 252-54).

persons who encounter the marks would be likely to assume a connection between the parties." *i.am.symbolic*, 866 F.3d at 1323 (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*, 794 F.3d at 1340 (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 "marks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison." *St. Helena Hosp.*, 774 F.3d at 751 (cleaned up; citation omitted). To determine the overall commercial impression of marks, our primary reviewing Court has instructed that it is acceptable to identify and consider all the elements that make up a mark, to determine the relative impact the elements have on the whole mark, so long as the ultimate comparison of the marks compares both marks in their entireties. *See, e.g.*, *In re Detroit Athl. Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018).

We start with the Class 14 refusal in light of 

. We note that the literal element is a compound term that puts together a form of the name JILL with the noun JEWELS. It's in a stylized cursive typeface, all lowercase, with dots over the "i"s and asterisks serving to dot the "j"s. Underneath the letters "j-e-w" in the middle of the term JILLIJEWELS is a small "curlicue" accent design. Applicant's mark THE JILLY BOX is in standard character format, and thus is not limited to any particular typeface. Usually the article "THE" contributes little to a mark's commercial impression, typically serving only to call attention to whatever noun follows. *See, e.g.*, *In re Thor Tech, Inc.*, No. 78634024, 2009 WL 1098997, at *2 (TTAB 2009); *U.S. Nat'l Bank v. Midwest Sav. and Loan Ass'n*, 1977 WL 22507, at *5 (TTAB 1977). Applicant does not argue that "THE" plays any larger or more significant role in THE JILLY BOX. The term "JILLY" is used as a name and modifies the term "BOX," indicating that the box has some relation to "JILLY."[77] Because "box" is descriptive of the curated "boxes" Applicant intends to offer, and because it comes after the term JILLY, it plays a bit less of a role in creating the overall commercial impression of Applicant's mark as a whole. *See, e.g.*, *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1266 (Fed. Cir. 2002) ("Given the descriptive nature of the disclaimed word 'Technologies,' the Board correctly found that the word 'Packard' is the dominant and distinguishing element of PACKARD TECHNOLOGIES.").

[77] Applicant seems to argue that, in its mark, JILLY refers to a specific TV personality / influencer, *see* 6 TTABVUE 17, but the record contains no evidence of that.

Thus, in both marks, the equivalent terms JILLY / JILLI, which are pronounced the same, play a relatively large role in each mark's overall commercial impression.[78] The terms "THE" and "BOX" play lesser roles in the overall commercial impression of Applicant's mark, as does the term JEWELS in  .

The nonliteral elements of  do not do much to differentiate the overall impressions of the marks. First, as noted, the application is for Applicant's mark in standard characters, which means it encompasses all typefaces, including the precise typeface in the '014 Registration. *See, e.g.*, *SquirtCo*, 697 F.2d at 1041 ("the argument concerning a difference in type style is not viable where one party asserts rights in no particular display"); *Weider Publ'ns, LLC v. D&D Beauty Care Co.*, No. 91199352, 2014 WL 343269, at *9 (TTAB 2014) ("because applicant applied to register its mark in standard character format, its display is not limited to any particular font style, size, or color, and we therefore must consider that applicant's mark might be used in any stylized display or color scheme, including one that is similar or identical to any lettering style used by opposer") (citations omitted). Second, as between design and literal elements of a mark, usually the literal terms contribute more to the mark's overall commercial impression. *See, e.g.*, *Viterra*, 671 F.3d at 1366; *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983). That

[78] Applicant does not argue that the slightly different spellings matter and, indeed, concedes that this is a similarity. 6 TTABVUE 18.

general observation is especially applicable here, where the design elements of the '014 Registration are neither large nor especially memorable.

Overall, we find the similarity in THE JILLY BOX (in standard characters) and  to outweigh the dissimilarities.

In contrast, as to the '185 Registration, which stands in the way of registration for Applicant's Class 35 services, we find the marks less similar overall. JILLY'S MOM MADE THAT is in standard characters, so there's no design element to serve as a possible means of distinction. But there are other differences. Whereas THE JILLY BOX indicates that someone names JILLY is responsible for the subscription box services, in JILLY'S MOM MADE THAT, JILLY is in adjectival form and modifies the noun MOM. It's also integrated into a sentence expressing the idea that someone other than "JILLY" (i.e., Jilly's mother) made or is in some way connected to the items sold at retail. So it communicates a significantly different meaning than THE JILLY BOX in the context of the respective services.[79]

[79] In its arguments against similarity, Applicant repeatedly accuses the Examining Attorney of "mutilating" the marks when comparing them. Trademark mutilation is a term of art that refers to certain types of mismatches between a specimen and the mark depicted in an application. *See* TMEP § 807.12(d) (May 2025). Applicant is not using the term in this term-of-art sense, but rather to contend that the Examining Attorney did not compare the two marks as wholes—a different concept. We see nothing indicating that the Examining Attorney did not compare the marks as wholes. What Applicant sees as "mutilation" is the Examining Attorney using a shorthand reference to refer to the Jilly/Jilli- components of the marks at issue. As the Federal Circuit has noted, it's perfectly fine to assess individual components of marks (e.g., Jilly/Jilli-) to determine the relative contributions of the individual elements of a mark to its overall commercial impression or to articulate similarities or differences, so long as the ultimate comparison is of the marks as wholes. *See, e.g.*, *Detroit Athl.*, 903 F.3d at 1305; *In re Dobeckmun Co.*, 286 F.2d 187, 188 (CCPA 1960).

Overall, we find the differences in the marks THE JILLY BOX and JILLY'S MOM MADE THAT to outweigh the similarities.

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.

Class 14. We found that the goods are in part identical because both the application and the '014 Registration list jewelry. This is an important factor and the fact that the goods are in part identical weighs strongly in favor of a conclusion that confusion is likely. *See Federated Foods*, 544 F.2d at 1103. The classes of customers and trade channels overlap as well. These two factors also weigh in favor of a conclusion that confusion is likely. As to the comparison of the marks, another key factor, *see id.*, we found that the marks' similarities outweigh their differences, resulting in a net gain addition to side of the scale favoring a likelihood of confusion. And we further bear in mind that, "where, as here, the goods at issue are identical, the degree of similarity necessary to support a conclusion of likely confusion declines." *Viterra Inc.*, 671 F.3d at 1363 (cleaned up; citation omitted).

The only factor that weighs against likely confusion is our finding that, due to a few third-party marks containing the term JILL in some form, the mark in the '014 Registration has a modest degree of weakness.

Weighing all these factors together, we think it clear that, on balance, the scales favor a conclusion that confusion is likely. The mark in the '014 Registration is simply not weakened enough that a mark as close as Applicant's is unlikely to cause confusion as to source.

Class 35. Here, the balance of factors is significantly different. For one thing, the services are not identical, but, rather, related. This is an important factor weighing in favor of confusion being likely. But we note that a finding of relatedness weighs less than a finding of identicality would have. The classes of customer and trade channels overlap, so these factors also fall on the side of the scale favoring likely confusion. But as the predecessor of our primary reviewing court has noted, these two factors, as compared to the comparison of the marks and goods/services, "are areas of peripheral inquiry." *Federated Foods*, 544 F.2d at 1103. As to the sixth likelihood-of-confusion factor, there is significantly more evidence of weakness as to marks containing JILL or some variant in the field encompassed by the mark in the '185 Registration than there is as to the Class 14 goods. And, comparing the marks—a key factor—we found that Applicant's mark THE JILLY BOX is more dissimilar than similar to the mark in the '185 Registration, JILLY'S MOM MADE THAT. That finding amplifies the importance of the significant showing of weakness Applicant made under the sixth factor. Weighing all the factors together, we think the dissimilarities in the mark, combined with the evidence of weakness, together outweigh the factors on the other side of the scale. On this record it is clear enough to us that, as to Applicant's Class 35 services, confusion is unlikely.

Decision: We affirm the refusal as to the goods in Class 14. We reverse the refusal as to the Class 35 services.