

This Opinion is Not a
Precedent of the TTAB

Mailed: April 24, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Studio Mir Co., Ltd.

—
Serial No. 90310822

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Amanda V. Dwight of Dwight Law Group,
for Studio Mir Co., Ltd.

Yocheved Bechhofer, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

—
Before Goodman, Heasley, and Stanley,
Administrative Trademark Judges.

Opinion by Stanley, Administrative Trademark Judge:

Studio Mir Co., Ltd. (“Applicant”) seeks to register on the Principal Register the
standard-character mark KOJI for goods ultimately identified as follows:

Comic books, picture books, graphic novels featuring
animated characters, all in the field of fiction; all the
foregoing relating to fictional character from anime series,
in International Class 16; and

Games and playthings, namely, card games, playing cards,
plush toys; stuffed dolls and toy animals; dolls; action
figures and accessories therefor; video game consoles;
board games; jigsaw and manipulative puzzles all the

foregoing relating to fictional character from anime series,
in International Class 28.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified goods in Classes 16 and 28, so resembles the standard-character mark KOJI, registered on the Principal Register for "stickers" in Class 16, that it is likely to cause confusion, to cause mistake, or to deceive.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. The case is briefed and ready for decision. We affirm the refusal to register Applicant's mark.

I. Preliminary Matters

A. Applicant's Proposed Amendment

Before proceeding to the merits of the refusal, we address two preliminary matters. In its brief, Applicant states that it "proposed the following amendment to

¹ Application Serial No. 90310822 was filed on November 10, 2020 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. The application originally identified goods and services in International Classes 9, 16, 18, 28, and 41. The goods and services in Classes 9, 18, and 41, however, were divided out into a child application and are not subject to this appeal. *See* Examining Attorney's Br., 8 TTABVUE 2.

Citations to the prosecution file are to the USPTO's Trademark Status & Document Retrieval ("TSDR") system in .pdf format. Citations to the appeal record are to TTABVUE, the Board's online docketing system

² Registration No. 7381026 issued on May 7, 2024, from an application filed August 21, 2020. The cited registration is owned by Koji Inc. ("Registrant").

their identification of goods” but that “the Examiner deemed these amendments insufficient”:

Class 16: “Graphic novels and comic books featuring the fictional character Koji from anime series created by Alexander Snow; all foregoing relating to entertainment property and excluding stickers, decals, or adhesive products”

Class 28: “Action figures, plush toys, card games, and board games, all featuring the fictional character Koji from anime series created by Alexander Snow; all foregoing relating to entertainment property.”³

This is inaccurate. In its Request for Reconsideration, Applicant amended its identification of goods in International Class 16 from:

Notebooks; calendars; books, namely, comic books, picture books, novels, graphic novels, magazines, periodicals, tabletop books, paperback books, and pamphlets featuring animated characters, all in the field of fiction; paper products, namely, collectible trading cards, notebooks, stationery, greeting cards, and stationery folders in the fields of animation, television, and film entertainment all relating to a character from an animated television show

to:

Comic books, picture books, graphic novels featuring animated characters, all in the field of fiction; all the foregoing relating to fictional character from anime series;

and its identification of goods in International Class 28 from:

Games and playthings, namely, card games, playing cards, plush toys; stuffed dolls and toy animals; dolls; action figures and accessories therefor; video game consoles; board games; jigsaw and manipulative puzzles

³ Applicant’s Br., 6 TTABVUE 6.

to:

Games and playthings, namely, card games, playing cards, plush toys; stuffed dolls and toy animals; dolls; action figures and accessories therefor; video game consoles; board games; jigsaw and manipulative puzzles all the foregoing relating to fictional character from anime series.⁴

In denying the Request for Reconsideration, the Examining Attorney concluded that the amended identifications did not negate finding the goods related for likelihood of confusion purposes.⁵ The identifications of goods, as amended in Applicant's Request for Reconsideration, are the identifications on appeal.

It is unclear whether Applicant, in its brief, is requesting that the Board further narrow the identifications of goods in International Classes 16 and 28, or is mistaken regarding the operative identifications. If Applicant is seeking to narrow the identifications, it offers no explanation for failing to request a remand of the application. *See In re Ox Paperboard, LLC*, No. 87847482, 2020 WL 4530517, at *1-2 (TTAB 2020) (explaining in descending order of preference the timing for filing a proposed amendment in an attempt to obviate a refusal: (1) propose an amendment as early as possible during prosecution of the application; (2) make an amendment in a request for reconsideration soon after the issuance of a final Office action and before the deadline to file an appeal; and (3) after filing an appeal "file a separately captioned request for remand and suspension of proceedings with the Board, ideally prior to the deadline for filing an appeal brief, so that the Board can make a prompt

⁴ July 1, 2025 Request for Reconsideration, TSDR at 1-2, 11.

⁵ July 22, 2025 Denial of Request for Reconsideration, TSDR at 2.

ruling on the request and the examining attorney does not have to draft a potentially unnecessary appeal brief”). To the extent Applicant is impliedly requesting a remand at this stage, the request is denied for failure to show good cause. *See id.* at *3; *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1205.01(b)(1) (2025) (“whether good cause will be found will depend, in part, on the stage of the appeal at the time the amendment is filed, including the reason given for the delay”).⁶

B. Evidentiary Issues

In its February 25, 2025 Response to Non-Final Office Action, Applicant identified ten third-party registrations to support its contention that “the USPTO has consistently approved the registration of identical marks owned by different parties for Class 16 and Class 28 goods.”⁷ Applicant attached as an exhibit screenshots from the TSDR database of the third-party registrations, showing the mark, registration number, application filing date, and registration date; but not, *inter alia*, the goods or services identified in any of the registrations (the “Original Registrations”).⁸ In the Final Office Action, the Examining Attorney advised Applicant, *inter alia*, that (1) “Applicant’s list of third party registrations has not been properly entered into the record[,]” (2) “the mere submission of a list of registrations ... does not make such registrations part of the record[,]” (3) “[t]o make third-party registrations part of the

⁶ In any event, even if Applicant’s narrower identifications were accepted, they would not obviate the Section 2(d) refusal in either Class 16 or Class 28, as our analysis herein would apply equally to the proposed narrower identifications.

⁷ February 25, 2025 Response to Non-Final Office Action, TSDR at 9

⁸ *Id.* at 10-13.

record, an applicant must submit copies of the registrations, or the **complete** electronic equivalent from the USPTO's automated systems, prior to appeal[.]" and (4) as submitted, the Original Registrations would not be considered.⁹ In its Request for Reconsideration, Applicant submitted the Original Registrations for the same proposition, again relying on the same partial screenshots from the TSDR database.¹⁰ In denying Applicant's Request for Reconsideration, the Examining Attorney did not object to the resubmission of the Original Registrations; instead, the Examining Attorney stated that "Applicant has entered the third-party registrations it referenced into the record[.]"¹¹

In its brief, Applicant relies on five of the ten previously identified Original Registrations, and also, for the first time, identifies twenty-seven additional third-party registrations (the "Additional Registrations"), all cited for the proposition that "[t]he USPTO consistently allows coexistence of identical marks across entertainment/character goods and general merchandise, including stickers and toys."¹² Applicant attached to its brief TSDR printouts showing the current status and title of all cited third-party registrations, including the goods and services for five of the Original Registrations. In her brief, the Examining Attorney objects to our consideration of Applicant's "new evidence" as untimely submitted.¹³

⁹ April 2, 2025 Final Office Action, TSDR at 7-8 (citations omitted) (emphasis in original).

¹⁰ July 1, 2025 Request for Reconsideration, TSDR at 6-9, 12.

¹¹ July 22, 2025 Denial of Request for Reconsideration, TSDR at 2.

¹² Applicant's Br., 6 TTABVUE 9-10.

¹³ Examining Attorney's Br., 8 TTABVUE 7-8.

“The Board does not take judicial notice of registrations and a list of registrations does not make those registrations of record.” *In re Peace Love World Live, LLC*, No. 86705287, 2018 WL 3570240, at *6 n.17 (TTAB 2018); *see, e.g., In re Carolina Apparel*, No. 74658141, 1998 WL 785303, at *1 n.2 (TTAB 1998) (same). However, an examining attorney may waive any objection to a list of registrations included in a response to an Office action by failing to object in the next Office action. *In re Broyhill Furniture Indus., Inc.*, No. 75473959, 2001 WL 940421, at *2 n.3 (TTAB 2001) (finding examining attorney’s objection to a listing of third-party registrations waived because it was not raised in the Office action immediately following applicant’s response in which applicant’s reliance on the listing as evidence was indicated); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.03 (Nov. 2025) (“If the applicant’s response includes improper evidence of third-party registrations, the examining attorney must object to the evidence in the first Office action following the response. Otherwise the Board may consider the objection to be waived.”).

Because the Examining Attorney did not object to the Original Registrations submitted with Applicant’s Request for Reconsideration and instead expressly stated that the registrations had been “entered” into the record, we treat the Original Registrations as having been stipulated into the record. *See In re Olin Corp.*, No. 86651083, 2017 WL 4217176, at *10 n.22 (TTAB 2017) (although Board does not take judicial notice of registrations, because the examining attorney addressed applicant’s two registrations in appeal brief, Board treated registrations as though they are of record); *In re Total Quality Group Inc.*, No. 75078660, 1999 WL 588248, at *5 n.6

(TTAB 1999) (Board considered listed third-party registrations where examining attorney did not object to the list and treated the registrations as if they were of record); *see also* TBMP § 1208.02 (“[I]f the examining attorney discusses the registrations in an Office action or brief, without objecting to them, the registrations will be treated as stipulated into the record.”). Not so for the Additional Registrations. The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). The Examining Attorney objected to the Additional Registrations in her brief – the first opportunity to do so. Applicant could have sought to cure the deficiency by filing a request for remand under Trademark Rule 2.142(d)(1), 37 C.F.R. § 2.142(d)(1), but did not.

In these circumstances, we find that the Examining Attorney waived any objection to the Original Registrations submitted with Applicant’s Request for Reconsideration and we have considered these registrations for whatever probative value they may have. *Broyhill Furniture*, 2001 WL 940421, at *2 n.3. The Examining Attorney timely objected to the Additional Registrations listed for the first time in Applicant’s brief. Accordingly, we sustain the Examining Attorney’s objection to the Additional Registrations and have given them no consideration.

II. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). *See also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023).

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). When analyzing the likelihood of confusion factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods and services, but also to protect registrants from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1207-08 (Fed. Cir. 1993).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role and some factors may not be relevant. *Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (citing *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). Varying weight may be assigned to each factor depending on the evidence presented, and “any one of the factors may control a particular case.” *Id.*; *see also Charger Ventures*, 64 F.4th at 1381. Although we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the goods. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). These factors, and others, are discussed below.

As noted above, the refusal covers two separate classes of goods. “Because each class in Applicant’s multi-class application is, in effect, a separate application, we

consider each class separately, and determine whether [the Examining Attorney] has shown a likelihood of confusion with respect to each.” *In re OSF Healthcare Sys.*, No. 88706809, 2023 WL 6140427, at *4 (TTAB 2023) (“On the appeal of a refusal to register directed to all classes in a multi-class application such as this one, examining attorneys and applicants should facilitate the Board’s review by discussing the evidence of relatedness on a class-by-class basis.”).

A. The Marks

We begin with the first *DuPont* factor, which considers the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (quoting *In re Davia*, No. 85497617, 2014 WL 2531200, at *2 (TTAB 2014)), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

Applicant concedes that its mark KOJI and Registrant’s mark KOJI, both in standard characters, are “identical.”¹⁴ Applicant nevertheless argues that the first

¹⁴ *See, e.g.*, Applicant’s Br., 6 TTABVUE 4 (identifying one of the issues presented on appeal as “[w]hether identical marks create a likelihood of confusion when one serves as the identifier of a specific fictional character in entertainment media while the other is used for

DuPont factor weighs against a likelihood of confusion because the marks have different connotations and commercial impressions. Specifically, Applicant contends that its mark “will always be presented and perceived as the name of a central character in a specific fictional universe, heavily branded through storytelling, animation, and character design,” whereas the cited mark “appears on generic ‘thank you’ stickers distributed exclusively to customers making purchases at Registrant’s retail store.”¹⁵ Applicant further points to Registrant’s specimen of use to claim that Registrant’s stickers “bear[] Registrant’s contact information and store details, creating a direct and unmistakable association between the KOJI mark and Registrant’s specific retail business,” which is different than “entertainment or character-based applications.”¹⁶

Applicant’s arguments are unpersuasive. The only evidence in the record as to the meaning of “Koji” is from Wikipedia, and it identifies “Koji” as “a masculine Japanese given name.”¹⁷ As discussed below, Applicant’s goods and Registrant’s goods are

generic stickers without character association”), 5 (the cited registration “covers the identical mark KOJI for ‘stickers’ in Class 16), 6 (“while the marks are identical in appearance ...”).

¹⁵ Applicant’s Br., 6 TTABVUE 6; *see also id.* at 7 (“The consumer encountering Applicant’s KOJI mark will immediately understand it as referring to a specific fictional character within a larger entertainment property, while the consumer encountering Registrant’s mark will perceive it as a product name for general stickers”).

¹⁶ *Id.* at 6-7.

¹⁷ April 2, 2025 Final Office Action, TSDR at 10 (screenshot of Wikipedia page for the word “KOJI”). We recognize the limitations inherent in Wikipedia evidence, but we have long held that we will consider it for whatever probative value it has if the non-offering party “has an opportunity to rebut that evidence by submitting other evidence that may call into question the accuracy of the particular Wikipedia information.” *In re IP Carrier Consulting Grp.*, No. 78542726, 2007 WL 1751192, at *4 (TTAB 2007). The Examining Attorney submitted the Wikipedia entry in the April 2, 2025 Final Office Action, and Applicant did not rebut the

related; and in the context of such related goods, there is no reason to believe KOJI would convey one meaning on Applicant's goods but a different meaning on Registrant's related goods. *In re Embiid*, No. 88202890, 2021 WL 2285576, at *9 (TTAB 2021) (“[T]here is no evidence here, or other reason to find, that the mark TRUST THE PROCESS has one meaning when used with shoes, and a second and different meaning when used with shirts and sweatshirts, based on the nature of the respective goods.”).

Moreover, Applicant's reliance on its intended use of KOJI as a fictional character name and on Registrant's asserted actual use as a “generic ‘thank you’ sticker” is misplaced. The relevant comparison is between the marks as they appear in the application and registration drawings, not on extrinsic marketplace uses. *Fuente Mktg. Ltd. v. Vaporious Techs., LLC*, __ F.4th __, 2026 WL 950251, at *4 (Fed. Cir. 2026) (“The correct inquiry requires comparison only of the applied-for mark ... to Fuente's registered X marks.”); *Embiid*, 2021 WL 2285576, at *6 (quoting *i.am.symbolic, llc*, 866 F.3d at 1323) (“We compare the applicant's and registrant's ‘marks themselves.’”); *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at *4 (TTAB 2018) (“[W]e do not consider how Applicant and Registrant actually use their marks in the marketplace, but rather how they appear in the registration and the application. We must compare the marks as they appear in the

evidence in its Request for Reconsideration. *Cf. i.am.symbolic*, No. 85916778, 2018 WL 3993582, at *8 n.6 (Board considered Wikipedia evidence submitted with a denial of a request for reconsideration because the applicant had the opportunity to rebut it by requesting remand to submit rebutting evidence).

drawings, and not [based] on any [extrinsic materials] that may have additional wording or information.”).

Because Applicant’s mark and the cited mark are the identical word KOJI in standard characters, and both can convey the commercial impression of a Japanese given name on related goods (as we find *infra*), we find the marks identical in sound, appearance, meaning, and commercial impression. Accordingly, the first *DuPont* factor weighs heavily in favor of a likelihood of confusion.

B. The Goods and Trade Channels

We turn next to the second *DuPont* factor, which considers the “similarity or dissimilarity and nature of the goods or services as described in an application or registration,” and the third *DuPont* factor, which considers “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306, 1308 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). In analyzing the relatedness of the goods and trade channels under the second and third *DuPont* factors, we look to the identifications in the application and cited registration. *See id.* at 1306 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services **described in the application and registration**, and **not** on real-world conditions.”) (emphasis in italics in original; in bold here); *Stone Lion*, 746 F.3d at 1323 (quoting *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)) (“the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application”).

“[I]t is not necessary that the products ... be similar or even competitive to support a finding of a likelihood of confusion.” *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven, Inc. v. Wechsler*, No. 91117739, 2007 WL 1431084, at *6 (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.* “[I]t is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, No. 85861533, 2015 WL 4269973, at *4 n.5 (TTAB 2015); *see also Gen. Mills, Inc. v. Fage Dairy Processing Indus. S.A.*, No. 91118482, 2011 WL 6001095, at *1 n.1 (TTAB 2011), *judgment set aside on other grounds*, 2014 WL 343267 (TTAB 2014) (“likelihood of confusion will be found as to the entire class if there is likely to be confusion with respect to any item that comes within the identification of goods in that class”). Because Applicant’s mark and Registrant’s mark are identical, the degree of similarity between the goods that is required to support a finding of likelihood of confusion is reduced. *Shell Oil*, 992 F.2d at 1207; *Time Warner Entm’t Co. L.P. v. Jones*, No. 91112409, 2002 WL 1628168, at *8 (TTAB 2002) (“the greater the degree of similarity between the applicant’s mark and the cited registered mark, the lesser the degree of similarity between the applicant’s goods or services and the registrant’s goods or services that is required to support a finding of likelihood of confusion”).

Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant's goods (or similar goods) and the goods listed in the cited registration (or similar goods). *See, e.g., In re Country Oven, Inc.*, No. 87354443, 2019 WL 6170483, at *2 (TTAB 2019); *Davia*, 2014 WL 2531200, at *7 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

As noted above, the Class 16 goods in the cited registration are "stickers," the Class 16 goods in the subject application are "comic books, picture books, graphic novels featuring animated characters, all in the field of fiction; all the foregoing relating to fictional character from anime series," and the Class 28 goods in the subject application are "games and playthings, namely, card games, playing cards, plush toys; stuffed dolls and toy animals; dolls; action figures and accessories therefor; video game consoles; board games; jigsaw and manipulative puzzles all the foregoing relating to fictional character from anime series."

The Examining Attorney submitted third-party Internet evidence showing that the same entity commonly produces the relevant goods and markets the goods under the same mark and that the relevant goods are sold or provided through the same

trade channels.¹⁸ More specifically, the record includes marketplace evidence, news articles, and third-party registrations.

With respect to marketplace evidence, the record contains screenshots from several websites showing that cartoon- or anime character-based marks are used in connection with stickers, comic books or picture books, and a variety of toys (e.g., plush toys, dolls, action figures, board games, puzzles).¹⁹ The character-based brands includes Cowboy Bebop, Gintama, Hunter x Hunter, Naruto Shippuden, Demon Slayer, Scooby Doo, Peppa Pig, Paw Patrol, Avatar The Last Airbender, Dora The Explorer, Arthur, and Blue's Clues.²⁰ New articles and blog posts in the record corroborate this merchandising practice by describing the broad licensing and sale of products centered on anime and other character properties.²¹

This evidence shows that consumers are accustomed to encountering goods of the type identified in Registrant's Class 16 (stickers) and Applicant's Classes 16 and 28 (e.g., comic or picture books and toys) emanating from a single source under a single

¹⁸ April 2, 2025 Final Office Action, TSDR at 13-275; July 22, 2025 Denial of Request for Reconsideration, TSDR at 4-217.

¹⁹ April 2, 2025 Final Office Action, TSDR at 13-274; July 22, 2025 Denial of Request for Reconsideration, TSDR at 9-17, 71-217.

²⁰ July 22, 2025 Denial of Request for Reconsideration, TSDR at 89-112 (Cowboy Bepop), 113-39 (Gintama), 140-67 (Hunter x Hunter), 168-94 (Naruto Shippuden), 195-209 (Demon Slayer); April 2, 2025 Final Office Action, TSDR at 13-64 (Scooby Doo), 66-92 (Peppa Pig), 94-143 (Paw Patrol), 146-76 (Avatar The Last Airbender), 181-206 (Dora The Explorer), 210-36 (Arthur), 238-74 (Blue's Clues).

²¹ July 22, 2025 Denial of Request for Reconsideration, TSDR at 4-6 (article from spielwaremesse.de titled "The Surge of Anime into Toys and Plush: A Growing Global Trend"), 18-19 (article from tvtropes.org, titled "Merchandise Driven"); 23-43 (a blog post from poggers.com, titled "Anime Statistics, Information, Data & Fun Facts"), 46-68 (article from teeenvogue.com, titled "32 Best Anime Gifts to Buy Online in 2024").

brand name. *See Detroit Athletic*, 903 F.3d at 1306 (evidence that third parties use the same mark for the involved goods and services “suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”); *In re Davey Prods. Pty Ltd.*, No. 77029776, 2009 WL 2420527, at *5 (TTAB 2009) (third-party website evidence shows that the applicant’s and registrant’s products “can be manufactured and sold by a single source”).

This determination is bolstered by more than forty use-based,²² third-party registrations introduced by the Examining Attorney showing that the same entity has registered a single mark identifying goods listed in Applicant’s application and the goods identified in the cited registration.²³ For example:

- Registration No. 5897622 for the standard-character mark PURPOSE THE PENGUIN for, in relevant part, “a series of books for children featuring a penguin character having some human characteristics” and “stickers” in International Class 16 and “games and playthings, namely, stuffed and plush toys” in International Class 28.²⁴
- Registration No. 7346558 for standard-character mark JOJO’S BIZARRE ADVENTURE for, in relevant part, “printed comic books” and “stickers” in


²² We have disregarded Registration Nos. 5711674, 5550105, 5662087, and 5604825 because these registrations have been canceled for failure to file an acceptable declaration under Trademark Act Section 8. *See Made in Nature v. Pharmavite*, No. 91223352, 2022 WL 2188890, at *15 (TTAB 2022) (disregarding cancelled third-party registrations; “A cancelled or expired registration has no probative value other than to show that it once issued and it is not entitled to any of the statutory presumptions of Trademark Act Section 7(b)”).

²³ December 8, 2024 Non-Final Office Action, TSDR at 7-50; April 2, 2025 Final Office Action, TSDR at 276-324.

²⁴ April 2, 2025 Final Office Action, TSDR at 284-85.

International Class 16 and “jigsaw puzzles,” “plush toys,” and “playing cards,” in International Class 28.²⁵



- Registration No. 6667025 for the composite mark  for, in relevant part, “books and publications, namely, books, magazines and comic books featuring animation” and “stickers and sticker books” in International Class 16 and “toys, games and playthings, namely, dolls and accessories therefor, action figures, ... plush toys, ... puzzles, ... card games, board games” in International Class 28.²⁶
- Registration No. 7019645 for the standard-character mark ILERI for, in relevant part, “stickers,” “printed comic books,” and “printed picture books” in International Class 16 and “puzzles,” “card games,” action figure toys,” and “plush toys” in International Class 28.²⁷
- Registration No. 7649736 for the standard-character mark MECHA REVOLUTION (“MECHA” disclaimed) for, in relevant part, “stickers,” “printed comic books,” and “printed manga graphic novels” in International Class 16 and “toy figures” in International Class 28.²⁸
- Registration No. 7659420 for the standard-character mark BOOPERS THE BAD CAT for, in relevant part, “printed children’s books” and “stickers” in International Class 16 and “stuffed toy animals; plush dolls; plush toys” in International Class 28.²⁹
- Registration No. 3946178 for the standard-character mark PEACEABLE KINGDOM for, in relevant part, “children’s books” and “stickers” in International Class 16 and “board games” and “card games” in International Class 28.³⁰
- Registration No. 3479977 for the standard-character mark YEAH! YEAH! OUT LOUD! for, in relevant part, “stickers” and “children’s books” in

²⁵ *Id.* at 290-91.

²⁶ *Id.* at 292-94.

²⁷ *Id.* at 297-98.

²⁸ *Id.* at 305-06.

²⁹ *Id.* 323-24.

³⁰ December 8, 2024 Non-Final Office Action, TSDR at 21-22.

International Class 16 and “toys, namely, stuffed flowers and plants” in International Class 28.³¹

As a general proposition, third-party registrations that cover goods from both the cited registration and an applicant’s application are relevant to show that the goods are of a type that may emanate from a single source under one mark.³² *See, e.g., In re Albert Trostel & Sons Co.*, No. 74186695, 1993 WL 596274, at *3 (TTAB 1993)); *In re Mucky Duck Mustard Co.*, No. 603019, 1988 WL 252484, at *3 n.6 (TTAB 1988), *aff’d*, (unpublished), No. 88-1444, 864 F.2d 149 (Fed. Cir. Nov. 14, 1988).

In view of the foregoing, we find that the Class 16 and Class 28 goods identified in the application are related to the Class 16 goods identified in the cited registration. *See, e.g., In re C.H. Hanson Co.*, No. 77983232, 2015 WL 6121759, at *6 (TTAB 2015) (six websites showing sale of the subject goods, coupled with five third-party registrations of marks for them, “support the conclusion that the goods are related”).

Turning to the trade channels, the third-party Internet evidence discussed above supports that Applicant’s and Registrant’s goods are offered by the same entities via the same websites, demonstrating overlapping trade channels. *See, e.g., Charger Ventures*, 64 F.4th at 1382 (third-party website evidence showed that services and channels of trade were similar); *Davey Prods. Pty Ltd.*, 2009 WL 2420527, at *5

³¹ *Id.* at 27.

³² “Just as we must consider the full scope of the goods and services as set forth in the application and registration under consideration, we must consider the full scope of the goods and services described in a third-party registration.” *Country Oven*, 2019 WL 6170483, at *5. “Because the benefits of registration are commensurate with the scope of the goods specified in the certificate of registration, a registration that describes goods broadly is presumed to encompass all goods or services of the type described.” *Id.*

(website evidence of third parties offering goods of both applicant and registrant showed same or overlapping channels of trade and purchasers).

Applicant argues that the second and third *DuPont* factors weigh against a likelihood of confusion because, inter alia: (1) “Applicant’s character-based entertainment goods serve preteens and their parents seeking branded merchandise from a specific fictional property,” whereas Registrant’s “generic” stickers serve a market of “consumers seeking office supplies, craft materials, or general decorative items”;³³ (2) Applicant’s “[c]haracter-based comic books and toys are purchased as entertainment products or collectibles related to a specific fictional property,” whereas Registrant’s stickers “function specifically as ‘thank you’ tokens distributed exclusively to customers making purchases at Registrant’s retail store”;³⁴ (3) “[c]onsumers purchasing [Applicant’s] KOJI-branded entertainment merchandise expect the products to originate from or be licensed by the entertainment company that created the character,” whereas “[c]onsumers purchasing [Registrant’s] generic stickers have no expectation of connection to entertainment properties and would not assume such products emanate from animation studios or entertainment companies”;³⁵ (4) Applicant’s trade channels comprise “[e]ntertainment retail stores specializing in anime/animation merchandise,” “[c]omic book specialty stores,” “[t]oy stores with entertainment merchandise sections,” “[o]nline platforms focused on

³³ Applicant’s Br., 6 TTABVUE 7.

³⁴ *Id.* at 7-8.

³⁵ *Id.* at 8.

character-branded goods, and “[b]ookstores carrying graphic novels,” whereas Registrant’s trade channel is limited to its retail store;³⁶ and (5) “[t]he USPTO consistently allows coexistence of identical marks across entertainment/character goods and general merchandise, including stickers and toys.”³⁷

These arguments are again not persuasive. As we have explained in innumerable decisions, the Board may not consider arguments “about how the parties’ **actual** goods, services, customers, trade channels, and conditions of sale are narrower or different from the goods and services identified in the applications and registrations.” *In re FCA US LLC*, No. 85650654, 2018 WL 1756431, at *4 n.18 (TTAB 2018) (emphasis in italics in original; in bold here); *see also, e.g., i.am.symbolic*, 866 F.3d at 1327 (“[T]he Board properly declined to import restrictions into the identification of goods based on alleged real-world conditions.”). It is the way Applicant and Registrant have identified their goods in their respective identifications that is controlling. *See Nat’l Football League v. Jasper Alliance Corp.*, No. 91077966, 1990 WL 354523, at *4 & n.5 (TTAB 1990).

While Applicant’s goods are limited to those “relating to [a] fictional character from [an] anime series,” the cited registration contains no limitations. The term “stickers” in the cited registration therefore encompasses all types of stickers, including stickers related to anime and licensed characters. The Examining Attorney’s evidence shows that character-based marks of the type Applicant seeks to

³⁶ *Id.*

³⁷ *Id.* at 9.

register commonly appear on books (e.g., comic books, picture books), toys (e.g., plush toys, dolls), and stickers.

Moreover, neither Applicant's identification nor the cited registration includes restrictions on channels of trade or classes of purchasers. Registrant's stickers are therefore not limited to distribution in Registrant's retail store; absent restrictions, we must presume that Registrant's stickers are sold in all normal channels of trade and to all ordinary purchasers for such goods. *See, e.g., Packard Press*, 227 F.3d at 1361 (goods or services in an unrestricted application or registration are presumed to travel in all normal channels of trade to all prospective purchasers for the relevant goods or services); *Nike, Inc. v. WNBA Enters., LLC*, No. 91160755, 2007 WL 763166, at *7 (TTAB 2007) ("Absent any restrictions in the respective applications and registrations, we must presume that applicant's apparel and bags and opposer's apparel are sold through all normal channels of trade for those goods, including all the usual retail outlets."). Here, the record shows overlap in trade channels for stickers and Applicant's Class 16 and Class 28 goods, including official character/universe retail sites (e.g., wbshop.com, pawpatrol.com, store.nickelodeonuniverse.com, paramountshop.com), booksellers (e.g., barnesandnoble.com, thriftbooks.com), and general retail websites (e.g., walmart.com, target.com).

Lastly, Applicant's reliance on sets of third-party registrations – where the identical mark is registered by different registrants for goods in Class 16 and Class

28 – is unconvincing.³⁸ Sets of third-party registrations may be used to show that the USPTO has registered the same mark to different parties for the goods at issue, thus “suggesting that the goods are not related.” *Embiid*, 2021 WL 2285576, at *18 (citing *In re G.B.I. Tile & Stone, Inc.*, No. 77369073, 2009 WL 3491050, at *5 (TTAB 2009)); see also *In re Thor Tech, Inc.*, No. 85667188, 2015 WL 496133, at *4 (TTAB 2015) (considering similar argument).

Upon close inspection of the Original Registrations, we are not convinced that they establish that the involved goods are unrelated or that that consumers are not accustomed to encountering these goods being offered by the same entity. First, eight registrations (four sets) is a small sample size, and of the four sets of registrations from the Original Registrations, only one even refers to “stickers,” as reflected in Applicant’s chart from its Request for Reconsideration, reproduced below:³⁹

³⁸ As discussed *supra* at page eight, we have only considered the Original Registrations.

³⁹ July 1, 2025 Request for Reconsideration, TSDR at 12 (the blank “Reg. No.” column has been removed). Comparing the eight registrations in the Request for Reconsideration and the first eight registrations listed in Applicant’s brief, we note that Applicant switched one of its IGNITE-formative marks, one of its AMP-formative marks, and one of its ATLAS-formative marks in its brief. *Compare id.* at 12 and Applicant’s Br., 6 TTABVUE 9 (switching Registration No. 5788627 for the mark IGNITE for billiard equipment with Registration No. 5786512 for the mark IGNITE GOOD! for, inter alia, “children’s books”, Registration No. 3304095 for the mark AMP for “sporting goods” with Registration No. 4347543 for “stickers”, and Registration No. 6893310 for “writing instruments” for Registration No. 3043519 for “printed materials”).

Mark	Class 16 Use	Class 28 Use
	IGNITE Stickers (Reg. No. 5807760)	Billiard game equipment (Reg. No. 5788627)
	APPLE Books (Reg. No. 1221667)	Toys and games (Reg. No. 3621571)
ATLAS	Writing instruments (Reg. No. 6893310)	Model spacecraft (Reg. No. 2430728)
AMP	Comic books (App. No. 98060232)	Sporting goods (Reg. No. 3304095)

Second, the record lacks important marketplace context, such as whether the registrants for the Original Registrations entered into coexistence agreements, whether the marks have actually coexisted in the marketplace without confusion, or whether the marks coexist in a crowded field such that consumers are conditioned to distinguish among them based on minor differences. *In re Thomas*, No. 78334625, 2006 WL 1258862, at *8 (TTAB 2006) (fact that marks co-existed on register does not prove that they coexisted in the marketplace without confusion); *In re Morinaga Nyugyo K. K.*, No. 86338392, 2016 WL 5219811, at *8 (TTAB 2016) (third-party registrations are not evidence of extent of use in the marketplace). The record also does not include the file histories for the registrations, so we do not know the reasons for their approval.

Third, the fact that similar marks may sometimes be registered for goods that emanate from different sources does not undermine the Examining Attorney's evidence that the goods may emanate from a common source. *Made in Nature*, 2022 WL 2188890, at *25 (“[f]or Applicant’s and Registrant’s identified goods to be related, it is not necessary that they **always** emanate from the same source under the same

mark.”) (emphasis in original). If confusion with the cited mark is likely, Applicant’s sets of third-party registrations do not justify registration of Applicant’s mark. *In re Toshiba Med. Sys. Corp.*, No. 79046106, 2009 WL 1896059, at *6 (TTAB 2009). Indeed, the cited sets of marks are so different from the marks at issue here that they merely stand for the principle that the USPTO decides each case on its own merits, and is not bound by prior determinations or actions of examining attorneys on different factual records. *Id.* at *6; *see also, e.g., In re Boulevard Entm’t*, 334 F.3d 1336, 1343 (Fed. Cir. 2003) (“[T]he [US]PTO must decide each application on its own merits, and decisions regarding other registrations do not bind either the [USPTO] or [the reviewing] court.”).

Applicant analogizes its presentation of paired registration evidence to that in *Thor Tech*.⁴⁰ The record in *Thor Tech*, however, differs substantially from the record in this appeal. The record in *Thor Tech*: (1) included only two third-party registrations to show a relationship between the involved goods, 2015 WL 496133, at *2-3; (2) demonstrated that seven sets of third-party registrations were owned by the registrant of the cited registration and the applicant or a related company, *id.* at *3; (3) established that the applicant’s and registrant’s goods were expensive, respectively ranging between about \$8,000-23,000 and \$17,000-40,000, *id.* at *5; (4) did not include third-party uses showing the same mark in connection with the goods; and (5) did not establish overlapping channels of trade, *id.* In contrast, the record here contains substantial third-party internet evidence along with more than

⁴⁰ Applicant’s Br., 6 TTABVUE 9.

forty third-party registrations supporting that Applicant's Class 16 and Class 28 goods and Registrant's Class 16 goods are related and share overlapping trade channels.

Accordingly, the second and third *DuPont* factors favor finding a likelihood of confusion.

C. Purchasing Conditions

DuPont also tells us to consider the “conditions under which ... sales are made, i.e. ‘impulse’ v. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. *See, e.g., Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 671 (CCPA 1956) (“confusion is less likely where goods are expensive and are purchased after careful consideration than where they are inexpensive and are purchased casually”) (citations omitted). Conversely, impulse purchases of inexpensive goods or services may tend to have the opposite effect. *Palm Bay Imps.*, 396 F.3d at 1376.

Applicant asserts that “[c]onsumers of character-branded merchandise are sophisticated purchasers who specifically seek products associated with particular entertainment properties” and that “[c]omic book and anime merchandise consumers, in particular, are knowledgeable about entertainment industry practices and carefully distinguish between authentic licensed products and unrelated items.”⁴¹

Applicant has offered no evidence to support its claim about careful purchasers, and “argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d

⁴¹ Applicant's Br., 6 TTABVUE 10.

1367, 1371 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)).

Furthermore, the application and cited registration identify goods that are not restricted by price or consumer sophistication; and the record suggests a wide price range for the identified goods, including inexpensive products purchased by ordinary purchasers, including children.⁴² We must base our decision “on the least sophisticated potential purchasers.” *Stone Lion*, 746 F.3d at 1325.

In view thereof, we find the fourth *DuPont* factor is neutral.

D. Actual Confusion or the Lack Thereof

Lastly, we address Applicant’s contention that “[t]he Examining Attorney has presented no evidence that consumers have ever confused character-based entertainment merchandise with generic stickers.”⁴³ Applicant’s assertions implicate the seventh and eighth *DuPont* factors, “the nature and extent of any actual confusion,” and “the length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 476 F.2d at 1361. The Examining Attorney is under no obligation to adduce evidence of actual confusion in

⁴² See, e.g., April 2, 2025 Final Office Action, TSDR at 16, 61, 91, 102, 115, 140, 156, 160, 188-89, 220, 238 (screenshots of character-based stickers ranging in price from \$1.99 - \$14.99); *id.* at 36, 134, 153, 184-85, 229-30, 243 (screenshots of character-based animated books ranging in price from \$4.19 - \$24.99); *id.* at 13, 39, 51, 66-74, 94-96, 99, 146-47, 149-51, 158, 175, 182, 214, 223 (screenshots of character-based toys ranging in price from \$6.88 - \$69.99); July 22, 2025 Denial of Request for Reconsideration, TSDR at 9, 71, 74, 87, 113-16, 140, 177, 207-08 (screenshots of character-based stickers ranging in price from \$1.25 - \$108.73); *id.* at 13-17, 50, 54, 80-86, (screenshots of character-based animated books ranging in price from \$4.99 - \$185.00); *id.* at 48-49, 52, 54, 77-78, 89-96, 117-21, 145-50, 168-76, 196-205 (screenshots of character-based toys ranging in price from \$1.75 - \$700.00).

⁴³ Applicant’s Br., 8 TTABVUE 10.

an ex parte appeal. *In re Jimenez*, No. 97551823, 2025 WL 3126703, at *7 (TTAB 2025).

In any event, “[t]he relevant test is **likelihood** of confusion, not **actual** confusion.” *Detroit Athletic*, 903 F.3d at 1309 (emphasis in italics in original; in bold here). “[A] showing of actual confusion is not necessary to establish a likelihood of confusion.” *Herbko Int’l*, 308 F.3d at 1165 (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1571 (Fed. Cir. 1983)).

In view thereof, the seventh and eighth *DuPont* factors are neutral.

III. Conclusion – Summary of the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there is evidence and argument, “explain the results of that weighing,” and address “the weight [we] assigned to the relevant factors.” *Charger Ventures*, 64 F.4th at 1384. “No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.” *In re Mighty Leaf Tea*, 601 F.3d. 1342, 1346 (Fed. Cir. 2010); *see also Naterra Int’l*, 92 F.4th at 1116-17 (“Only the *DuPont* factors of significance to the particular mark need be considered in the likelihood of confusion analysis.”).

We have carefully considered all of the evidence and arguments. The marks are identical in sound, appearance, meaning, and commercial impression; thus, the first *DuPont* factor weighs heavily in favor of a likelihood of confusion. The Class 16 and Class 28 goods of Applicant’s application and the Class 16 goods of the cited registration are related, and the trade channels overlap. Accordingly, the second and

third *DuPont* factors also weigh in favor of a likelihood of confusion. The fourth, seventh, and eighth factors are neutral in our likelihood of confusion analysis. No *DuPont* factor weighs against a likelihood of confusion. Accordingly, we conclude that confusion is likely between Applicant's mark for the identified goods in Classes 16 and 28 and the cited mark for the identified goods in Class 16.

Decision: The Section 2(d) refusal to register Applicant's mark in both International Classes 16 and 28 is affirmed.