

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Global Brand Partners Pte Ltd*  
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Serial No. 97102423  
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Leo M. Loughlin and Davide F. Schiavetti of Rothwell, Figg, Ernst & Manbeck,  
P.C., for Global Brand Partners Pte Ltd.

Magdalena Berger, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

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Before Heasley, Johnson and Lebow,  
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Global Brand Partners Pte Ltd, seeks to register the mark shown  
below, “consist[ing] of a stylized letter ‘X,’ with the left side of the ‘X,’ divided in two,”



on the Principal Register, for “Footwear; T-shirts; Sports bras; Leggings; Tank tops;  
Shorts; Tights; Headbands; Caps being headwear; Long sleeved tops as clothing; Crop

tops; Hoodies; Sweatpants; Socks; Sports shoes,” in International Class 25.<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used on or in connection with the identified goods, is likely to cause confusion with the principally registered mark shown below “consist[ing] of a design in the shape of the letter ‘X’ featuring an additional design within the letter” for “shoes” in International Class 25:



After the refusal was made final, Applicant filed a notice of appeal. For the reasons discussed below, we affirm the refusal.

### **I. Likelihood of Confusion**

Section 2(d) of the Trademark Act provides that a mark may be refused registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, 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....

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<sup>1</sup> Application Serial No. 97102423 (“the Application”) was filed on November 1, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use of August 14, 2021, and first use in commerce of October 25, 2021.

<sup>2</sup> Registration No. 6258348, issued January 26, 2021.

15 U.S.C. § 1052(d), *quoted in In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at \*2 (Fed. Cir. 2023).

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. duPont deNemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the “*DuPont* factors”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). “The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

**A. Similarity of the Goods, Channels of Trade, and Classes of Customers**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. A proper comparison of the goods “considers whether ‘the consuming public may perceive [the respective goods

or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods in a particular class. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

Applicant’s goods, again, are “Footwear; T-shirts; Sports bras; Leggings; Tank tops; Shorts; Tights; Headbands; Caps being headwear; Long sleeved tops as clothing; Crop tops; Hoodies; Sweatpants; Socks; Sports shoes,” and Registrant’s goods are “shoes.” Applicant’s “sports shoes” are encompassed by Registrant’s “shoes,” which in turn are encompassed by Applicant’s “footwear.” The respective goods are legally identical in part and thus overlapping.<sup>3</sup> *See, e.g., In re Hughes Furniture Indus., Inc.*,

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<sup>3</sup> Because we have found that the goods identified in the Application are in part legally identical to the goods identified in the cited registration, “there is no need for us to further consider the relatedness of the goods,” *In re FabFitFun*, 127 USPQ2d 1670, 1672 (TTAB 2018) (citations omitted). Nevertheless, for the sake of completeness, we note that the Examining Attorney has introduced into the record website screenshots from Nike, American Eagle, Under Armour, Reebok, Ann Taylor, Old Navy, Ralph Lauren, Puma, Talbots, and L.L.Bean—all showing that the same entity commonly provides Applicant’s and Registrant’s sorts of goods under the same mark. April 14, 2023 Final Office Action, TSDR 11-147. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (relatedness supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both....”). The Examining Attorney also made of record ten used-based third-party registrations, including Registration Nos. 6996584, 7003796, 7009844, 7010729, 7012447, 7022410, 7022746, 7023691, 7023981, and 7023986, which identify the same or similar goods as those of both Applicant and Registrant. *Id.* at 148-67. Third-party registrations have some probative value to the extent they may serve to suggest that such goods are of a type which emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, n.6 (TTAB 1988).

114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”); *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1518 (TTAB 2016) (“Inasmuch as Registrant’s goods are encompassed within the scope of Applicant’s goods, the respective goods are legally identical in part.”).

Legally identical goods are presumed to travel in same channels of trade to the same class of purchasers. *In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *see also In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”), *quoted in In re FabFitFun*, 127 USPQ2d at 1672-73.

Consequently, the second and third *DuPont* factors weigh strongly in favor of finding a likelihood of confusion.

## **B. Similarity of the Marks**



Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d

1157, 1160 (Fed. Cir. 2014); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d*, 777 Fed. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The test assesses not whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are so similar that confusion as to the source of the goods offered under the respective marks is likely to result. *Cai v. Diamond Hong*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *see also Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

“We [also] keep in mind that where, as here, the goods are in-part identical, less similarity between the marks is needed for us to find a likelihood of confusion. *Bridgestone Ams. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012); *Century 21 Real Est. Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (“When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.”).

Applicant's and Registrant's marks, again, are:

Applicant's Mark	Registrant's Mark
	

The Examining Attorney argues that the first *DuPont* factor weighs in favor of a finding of likelihood of confusion because Applicant's and Registrant's marks are "visually highly similar," as they both comprise a single letter X; have two prongs on the right side that are "in solid color"; and "[t]he left side in both designs is separated in what appears to be three lines."<sup>4</sup> Additionally, while "Registrant's design features in the middle, slightly towards the left side, an additional small rectangle design that is located where the three lines intersect," "[o]verall, visually, both marks are recognized as a stylized 'X' that features three lines on the left side and solid prongs on the right side."<sup>5</sup> Furthermore, she asserts, "[t]he marks are essentially phonetic equivalents [of the letter X] and thus sound similar."<sup>6</sup> *In re 1st USA Realty Pros., Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968)); *Trak Inc. v. Traq Inc.*, 212 USPQ 846, 850 (TTAB 1981) ("Where the marks in conflict possess a marked similarity in

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<sup>4</sup> 6 TTABVUE 3-4 (Examining Attorney's Brief).

<sup>5</sup> *Id.* at 5-6.

<sup>6</sup> *Id.* at 4-5.

sound, this factor alone may be sufficient to support a holding that the marks are confusingly similar.”).

Applicant asserts that “the marks are sufficiently different” to avoid a likelihood of confusion but does not offer any arguments to support this assertion.<sup>7</sup>

We agree with the Examining Attorney that the overall commercial impression of the marks is “sufficiently similar to find a likelihood of confusion.”<sup>8</sup> Both marks are discernable depictions of the letter X and share certain characteristics including three lines on the left side and solid prongs on the right side. *See Textron Inc. v. Maquinas Agricolas “Jacto” S.A.*, 215 U.S.P.Q. 162, 163 (TTAB 1982) (observing that in cases involving highly stylized letter marks “similarity of appearance is usually controlling and the decision [regarding likelihood of confusion] will turn primarily on the basis of the visual similarity of the marks”). *Cf. In re Steury Corp.*, 189 USPQ 353 (TTAB 1975) (finding a design mark consisting of three stacked broad horizontal bars with curved ends to be similar, even if not identical, to another design mark consisting of two stacked broad horizontal bars with curved ends); *Matsushita Elec. Indus. Co. v. Sanders Assocs., Inc.*, 177 USPQ 720 (TTAB 1973) (finding two design marks, each consisting essentially of a triangle design created by three arrows radiating from the center, to be similar, even if not identical).

The first *DuPont* factor weighs heavily in favor of finding a likelihood of confusion.

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<sup>7</sup> 4 TTABVUE 6 (Applicant’s Brief).

<sup>8</sup> 6 TTABVUE 5 (Examining Attorney’s Brief).










### C. Strength or Weakness of Registrant's Mark

Under the fifth and sixth *DuPont* factors, we consider the strength of the cited registered mark, and the extent to which that strength may be attenuated by “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567. The mark’s strength may vary along a spectrum from very strong to very weak, *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017), measured in terms of its conceptual and commercial strength. *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength ....”), *quoted in Advance Mag. Publishers, Inc. v. Fashion Elecs., Inc.*, 2023 USPQ2d 753, \*9 (TTAB 2023).

In *ex parte* appeals, where the Registrant is not a party, the Examining Attorney is not usually expected to adduce evidence of the cited registered mark’s strength or “fame,” and the fifth *DuPont* factor is, in consequence, treated as neutral. *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1086 (TTAB 2016). Nonetheless, the Applicant in such an appeal may seek to contract the cited mark’s scope of protection by adducing evidence of “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567.

Applicant seeks to do that here by introducing into the record the following third-party registrations covering Class 25 clothing goods:

Registration No.	Mark
3715094	
6356405	
6054044	
6368448	
6638614	
6466305	
6267406	

5949541	
5906452	
5623600	
5389276	
5194908	

This evidence is unavailing. *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973) (“The existence of these registrations is not evidence of what happens in the market place or that customers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive.”).


More importantly, as emphasized in *DuPont*, it is “[t]he number and nature of **similar marks** in use on similar goods” that is important. *DuPont* at 567 (emphasis

added). In the third-party marks cited by Applicant, we are hard pressed to find the letter X set forth as prominently as in the involved Application and Registration. As the Examining Attorney notes, none of them “features a design that visually resembles the mark at issue”; “[s]even of the submitted third-party marks are composite marks” that “feature design elements and other wording thereby creating a markedly different commercial impressions from applicant’s and registrant’s mark”; and “the design elements in these registrations do not resemble the stylized letters X at issue in this case.”<sup>9</sup>

Consequently, we find the sixth *DuPont* factor neutral in our analysis.

#### **D. Conclusion**

The goods and trade channels overlap, and the marks are far more similar than dissimilar in in appearance, sound, connotation and commercial impression. The first, second, and third *DuPont* factors thus weigh in favor of a finding of likelihood of confusion, with no factors weighing against a likelihood of confusion. Accordingly,

we find Applicant’s mark  for “Footwear; T-shirts; Sports bras; Leggings; Tank tops; Shorts; Tights; Headbands; Caps being headwear; Long sleeved tops as clothing; Crop tops; Hoodies; Sweatpants; Socks; Sports shoes,” is likely to cause

confusion with the mark  in Registration No. 6258348 for “shoes.”

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<sup>9</sup> 6 TTABVUE 6 (Examining Attorney’s Brief).

***Decision:*** The refusal to register Application Serial No. 97102423 is affirmed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).