

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: July 12, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Creative Systems and Design, LLC*

Serial No. 97340379

Peter J. Davis of Whiteford Taylor & Preston LLP,  
for Creative Systems and Design, LLC.

Sarah Frizalone, Trademark Examining Attorney, Law Office 112,  
Matthew Cuccias, Managing Attorney.<sup>1</sup>

Before Pologeorgis, English, and Lavache,  
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:<sup>2</sup>

<sup>1</sup> Another examining attorney examined the application before it was reassigned to the above-listed examining attorney to prepare an appeal brief.

<sup>2</sup> As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, citations in this opinion are in the form recommended in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For opinions of the Board, this opinion employs citations to the Lexis legal database and cites only precedential decisions. Practitioners should also adhere to the practice set forth in TBMP § 101.03. Precedential decisions of the Board, and precedential decisions of the Federal Circuit involving Board decisions that issued January 1, 2008, or after may be viewed in TTABVUE by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent. Many precedential Board decisions that issued from 1996 to 2008 are available online from

Serial No. 97340379

Creative Systems and Design, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark **QUANTEX** for the following goods in International Class 8:<sup>3</sup>

Hand tools, namely, ratchet wrenches, sockets, extensions, drive tools, socket sets, open end wrenches, combination wrenches, adjustable wrenches, pipe wrenches, screwdrivers, nut drivers, hex drivers, torque wrenches, and hand drills.

The Trademark Examining Attorney refused registration of Applicant’s mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground of likelihood of confusion, citing the composite mark displayed below.



The cited registration issued on the Principal Register for the following goods in International Class 11:

Electric lamps; Headlights for automobiles; Lamps; LED light assemblies for street lights, signs, commercial lighting, automobiles, buildings, and other architectural uses; LED light bulbs; Light bulbs for directional signals for vehicles; Lighting apparatus, namely, lighting installations; Lights for vehicles; Lighting apparatus for vehicles.<sup>4</sup>

---

the TTAB Reading Room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

<sup>3</sup> Application Serial No. 97340379 , filed on March 31, 2022, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), based on an allegation of a bona fide intention to use the mark in commerce.

<sup>4</sup> Registration No. 5623831 issued on December 4, 2018. The registration includes the following description of the mark: “The mark consists of the word ‘QUANTEX’ and two boxes on the left with letters ‘B’ and ‘L’ written inside the boxes. The boxes have an outline on the right.” Color is not claimed as a feature of the mark.

After the Examining Attorney issued a final refusal to register, Applicant appealed. Both Applicant and the Examining Attorney filed briefs. We affirm the refusal to register for the reasons explained below.<sup>5</sup>

## **I. Evidentiary Objection**

Before turning to our analysis, we first consider the Examining Attorney's objection to printouts of two registration records from the TSDR database that Applicant submitted for the first time with its Appeal Brief as Exhibits A and B.<sup>6</sup> The Examining Attorney asserts that we should disregard this evidence as untimely.<sup>7</sup> We agree.

The record in an appeal must be complete prior to the filing of the appeal. 37 C.F.R. § 2.142(d); TBMP § 1208.02. Thus, the registration record printouts in Applicant's Appeal Brief, submitted after filing of the appeal, are untimely. Accordingly, we sustain the Examining Attorney's objection and have not considered this evidence.

## **II. Likelihood of Confusion**

Trademark Act Section 2(d), in relevant part, 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." 15 U.S.C. § 1052(d). We determine whether confusion is likely by

---

<sup>5</sup> The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application.

<sup>6</sup> Applicant's Appeal Brief, 4 TTABVUE 7-15.

<sup>7</sup> Examining Attorney's Brief, 6 TTABVUE 2-3.

analyzing all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and the relatedness of the respective goods or services, because the “fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, we have considered each *DuPont* factor that is relevant or for which there is evidence and argument of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1205 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). Ultimately, however, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).


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


Our analysis in this case begins with the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. See *Palm Bay Imps.*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly

similar. *See Krim-Ko Corp. v. Coca-Cola 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.”); *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at \*13 (TTAB 2018).

“The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (internal quotation marks omitted)).

Here, Applicant’s mark is **QUANTEX** in standard characters. The cited composite

mark is . The cited registration describes Registrant’s mark as “the word ‘QUANTEX’ and two boxes on the left with letters ‘B’ and ‘L’ written inside the boxes.”

Applicant’s mark **QUANTEX** is identical to a portion of the cited mark . The Examining Attorney argues that this shared wording results in marks that are confusingly similar in terms of sound, appearance, and commercial impression.<sup>8</sup> Applicant counters that the “B” and “L” design element of the cited mark renders it “immediately distinguishable” from Applicant’s mark.<sup>9</sup>

---

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

<sup>9</sup> Applicant’s Brief, 4 TTABVUE 2.

Applicant further contends that the Examining Attorney improperly dissected the cited mark by treating QUANTEX as the only “word portion” in the mark in order to deem it the dominant element, unduly discounting the significance of the letters “B” and “L.”<sup>10</sup>

Applicant is correct that all elements of the respective marks must be considered. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). However, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *Id.*

In this case, we find that QUANTEX is the dominant element in the cited mark. While the design element, incorporating the letters “B” and “L,” appears first in the mark, consumers may not discern the letters “B” and “L,” but rather may only perceive a design element. Further, the word QUANTEX is visually more prominent and forms a pronounceable word. *See Toro Co. v. ToroHead, Inc.*, Opp. No. 114061, 2001 TTAB LEXIS 823, at \*5-6 (TTAB 2001) (finding TORO to be the dominant element of applicant’s mark, ToroMR (with bull design), where, *inter alia*, it was prominently featured and was the only pronounceable word in the mark). Therefore, consumers are more likely to view QUANTEX, not the design element with the letters “B” and “L,” as the primary textual, and thus dominant, element of the mark. *See In re Electrolyte Labs, Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) (“The nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be

---

<sup>10</sup> *Id.* at 3.

weighed in the context in which they occur.”); *cf. In re Viterra Inc.*, 671 F.3d 1358, 1366 (Fed. Cir. 2012) (“[T]he verbal portion of a word and design mark likely will be the dominant portion.”); *In re Strathmore Prods., Inc.*, 1971 TTAB LEXIS 210, at \*3 (TTAB 1971) (“[M]arks must be considered in their entireties but where a mark is a composite mark including a design and a word then which of the two features dominates the mark is usually controlling in the determination of likelihood of confusion.”).

Often, where the entirety of one mark is the dominant element of another mark, the likelihood of confusion is increased. *See, e.g., Hunter Indus., Inc. v. Toro Co.*, Opp. No. 91203612, 2014 TTAB LEXIS 105, at \*33 (TTAB 2014) (“Likelihood of confusion often has been found where the entirety of one mark is incorporated within another.”); *see also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1320-22 (Fed. Cir. 2014) (affirming Board’s finding that the marks at issue were similar where the applicant’s mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION); *Double Coin Holdings Ltd. v. Tru Dev.*, Canc. No. 92063808, 2019 TTAB LEXIS 347, at \*20-23 (TTAB 2019) (finding “the parties’ marks are similar in their entireties” after noting that respondent’s “junior mark, ROAD WARRIOR contains [petitioner’s] entire mark WARRIOR”). We find that to be the case here.

Indeed, because Applicant’s mark is identical to the cited mark’s dominant element, we find that the marks look and sound similar. *See, e.g., In re Charger Ventures*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) (“[A]n additional word or component


may technically differentiate a mark but do little to alleviate confusion.”). With respect to sound in particular, consumers are likely to use the QUANTEX portion of the cited mark in asking for Registrant’s goods because this is the most prominent and dominant element in the cited mark. *See In re Viterra, Inc.*, 671 F.3d 1358, 1366 (Fed. Cir. 2012) (“[T]he verbal portion of a word and design mark likely will be the dominant portion . . . given that the literal component of brand names likely will appear alone when used in text and will be spoken when requested by consumers.”); *In re Aquitaine Wine*, Ser. No. 86928469, 2018 TTAB LEXIS 108, at \*20 (TTAB 2018) (“[C]onsumers often have a propensity to shorten marks when ordering [goods] orally.”).

The record does not contain any evidence suggesting that QUANTEX has any particular significance or meaning, either generally or as applied to the respective goods at issue. So, whatever commercial impression this apparently coined (and thus distinctive) term creates would be the same for both marks. We must consider, however, whether the design element in the cited mark incorporating the letters “B” and “L” gives it a distinct connotation or different meaning in the minds of consumers and thus produces a different commercial impression. *See In re Chatam Int’l*, 380 F.3d 1340, 1342-44 (Fed. Cir. 2004); *In re Electrolyte Labs, Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) (“No element of a mark is ignored simply because it is less dominant.”)

We have no evidence in the record as to the significance of the letters “B” and “L” in the cited mark. Applicant states that “B L has significant meaning” but does not



disclose what that meaning might be.<sup>11</sup> Indeed, Applicant itself asserts that consumers encountering that portion of the mark will wonder “what does B L stand for; what does it mean?”<sup>12</sup>

We note that “B” and “L” are the first letters in a portion of Registrant’s name, i.e., Shenzhen **Bright-Land** Opto-Electronic Co., Ltd. However, there is nothing in the record to suggest that consumers are aware of this. *See Johnson & Johnson v. E.I du Pont de Nemours & Co.*, 1974 TTAB LEXIS 46, at \*5-6 (TTAB 1974) (“It is settled that the function of a trademark is to identify a single, albeit anonymous, source of commercial sponsorship of goods to which it pertains.”); *see also* J. Thomas McCarthy, 1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 3:12 (5th ed. May 2024 update) (“A trademark identifies a single source. But this does not mean that the buyer must know the identity of that ‘single source’ in the sense that she knows the corporate name of the producer or seller. In fact, few buyers know, or care about, the identity of the corporate owner of a brand.”). And, in any event, we have no evidence that such awareness would change the connotation or meaning of the cited mark in a way that would create a distinct commercial impression and avoid confusion. Regardless, consumers could reasonably assume that Applicant’s goods sold under the QUANTEX mark constitute another product line from the same source as the goods sold under the cited mark  with which they are acquainted or familiar, and that Applicant’s mark is merely a variation of, or derivative of, the

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2.

cited mark. *See, e.g., In re Comexa Ltda.*, Ser. No. 75396043, 2001 TTAB LEXIS 274 (TTAB 2001) (applicant's use of term AMAZON and parrot design for chili sauce and pepper sauce is likely to cause confusion with registrant's AMAZON mark for restaurant services); *SMS, Inc. v. Byn-Mar Inc.*, Opp. Nos. 91068062 & 91068063, 1985 TTAB LEXIS 32, at \*4 (TTAB 1985) (applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing.").

We conclude that the design element in the cited mark, incorporating the letters "B" and "L," does not give the mark a distinct connotation or different meaning in the minds of consumers. Accordingly, we find that the marks, in their entirety, are more similar than dissimilar in sound, appearance, connotation, and overall commercial impression, because of the shared identical and dominant term QUANTEX. *See In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003) (noting that "similarity is not a binary factor but is a matter of degree").

The first *DuPont* factor thus favors a finding of likelihood of confusion.

#### **B. Relatedness of the Goods**

We now turn to the comparison of the respective goods, the second *DuPont* factor. In determining the relatedness of the goods, we must look to the goods as identified in Applicant's application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990) ("The authority is legion that 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 regardless of what

the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”)); *see also In re Giovanni Food Co.*, Ser. No. 77796257, 2011 TTAB LEXIS 38, at \*5 (TTAB 2011).

It is sufficient that the goods are related in some manner, or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1396 (Fed. Cir. 2012); *7-Eleven, Inc. v. Wechsler*, Opp. No. 91117739, 2007 TTAB LEXIS 28, at \*18 (TTAB 2007). The issue is not whether consumers would confuse Applicant's goods with Registrant's goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 TTAB LEXIS 77, at \*16 (TTAB 2012); *In re Rexel Inc.*, Ser. No. 241423, 1984 TTAB LEXIS 57, at \*2 (TTAB 1984).

Moreover, registration must be refused if Applicant's mark for any of its identified goods is likely to cause confusion with the Registrant's mark for any of the goods listed in the cited registration. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or

services in the application).

To reiterate, Applicant's identified goods are "Hand tools, namely, ratchet wrenches, sockets, extensions, drive tools, socket sets, open end wrenches, combination wrenches, adjustable wrenches, pipe wrenches, screwdrivers, nut drivers, hex drivers, torque wrenches, and hand drills," in International Class 8. Registrant's goods are "Electric lamps; Headlights for automobiles; Lamps; LED light assemblies for street lights, signs, commercial lighting, automobiles, buildings, and other architectural uses; LED light bulbs; Light bulbs for directional signals for vehicles; Lighting apparatus, namely, lighting installations; Lights for vehicles; Lighting apparatus for vehicles," in International Class 11.

Evidence showing that third parties in the marketplace offer both types of goods at issue under a single mark may support the conclusion that consumers will view the goods as related. *See, e.g., Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) ("[T]estimony that third-party companies sell both types of goods is pertinent to the relatedness of the good."); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1328-29 (Fed. Cir. 2000) (finding the Board "erred when it refused to consider the lay evidence that several large companies produce and sell both pet and human food in deciding whether a consumer would reasonably believe that . . . dog treats originated from the same source as . . . human snacks").

To this end, the Examining Attorney submitted third-party website excerpts showing that third-party retailers offer both hand tools and lighting products under the same mark. In particular, this evidence shows each of the following marks being

used in connection with the respective goods: CRAFTSMAN;<sup>13</sup> MILWAUKEE;<sup>14</sup> DEWALT;<sup>15</sup> HILTI;<sup>16</sup> MAC TOOLS;<sup>17</sup> KLEIN TOOLS;<sup>18</sup> FESTOOL;<sup>19</sup> RYOBI;<sup>20</sup> SNAP-ON;<sup>21</sup> and KOBALT.<sup>22</sup> For instance, [www.craftsman.com](http://www.craftsman.com) shows both CRAFTSMAN-branded open-end wrenches, ratcheting wrenches, and sockets, as well as CRAFTSMAN-branded work lights, task lights, and LED area lights.<sup>23</sup> The [www.milwaukeetool.com](http://www.milwaukeetool.com) website displays screwdrivers, wrenches, headlamps, site lights, task lights, flood lights, search lights, and other lighting products, all bearing the MILWAUKEE brand.<sup>24</sup> And [www.mactools.com](http://www.mactools.com) shows the MAC TOOLS brand appearing on various socket sets, wrenches, nut drivers, LED lights, work lights, area lights, and head lamps.<sup>25</sup> The remainder of the Examining Attorney's third-party website evidence reflects this same pattern.<sup>26</sup>

---

<sup>13</sup> See Dec. 21, 2022, Non-Final Action, at TSDR 9-20.

<sup>14</sup> See *id.* at 21-28.

<sup>15</sup> See *id.* at 30-44.

<sup>16</sup> See May 3, 2023, Final Action, at TSDR 10-21.

<sup>17</sup> See *id.* at 21-31, 69-71, 77-79.

<sup>18</sup> See *id.* at 33-40, 90.

<sup>19</sup> See *id.* at 42-45.

<sup>20</sup> See *id.* at 47-53.

<sup>21</sup> See *id.* at 55-58, 116-119.

<sup>22</sup> See *id.* at 59-64, 120-123.

<sup>23</sup> See Dec. 21, 2022, Non-Final Action, at TSDR 9-20.

<sup>24</sup> See *id.* at 21-29.

<sup>25</sup> See May 3, 2023, Final Action, at TSDR 21-32, 69-71, 77-79.

<sup>26</sup> Some of the website excerpts also show power tools. See, e.g., *id.* at 108-113, 126-127. While these goods are not encompassed by Applicant's identification of goods, which is limited to "hand tools," this evidence does have some minimal probative value because it supports the proposition that tools, generally, may be sold under the same mark as lighting products.

While many of the various lighting products referenced in this evidence are not specifically listed in the cited registration, we consider them to be encompassed by the term “lamps,” which does appear in the identification and is broadly defined as “any of various devices for producing light or sometimes heat.”<sup>27</sup> *In re Solid State Design Inc.*, Ser. No. 87269041, 2018 TTAB LEXIS 1, at \*16 (TTAB 2018) (noting that, where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, Proc. No. 94002242, 2015 TTAB LEXIS 176, at \*60-61 (TTAB 2015) (same); *In re Elbaum*, 1981 TTAB LEXIS 68, at \*3 (TTAB 1981) (same).

We conclude, based on the Examining Attorney’s third-party website evidence, that consumers are accustomed to encountering both Applicant’s goods and Registrant’s goods under the same mark and thus would likely believe that both types of goods can and do emanate from the same source.

Moreover, some of this evidence suggests that the respective goods here are designed or intended to be used together and thus are complementary. *See In re Ox Paperboard, LLC*, Ser. No. 87847482, 2020 TTAB LEXIS 266, at \*18 (TTAB 2020) (noting that complementary use of goods is a factor in finding relatedness). For

---

<sup>27</sup> See Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/lamp> (accessed on July 8, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed form or regular fixed editions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, Opp. No. 91061847, 1982 TTAB LEXIS 146, at \*7 (TTAB 1982), *aff’d*, 703 F.2d 1372 (Fed. Cir. 1983); *In re Red Bull GmbH*, Ser. No. 75788830, 2006 TTAB LEXIS 136, at \*7 (TTAB 2006); TBMP § 1208.04.

example, one of the webpage excerpts from [www.kleintools.com](http://www.kleintools.com) notes that the KLEIN TOOLS “Utility Bucket LED light [is] designed with three lighting options to light up the surrounding work area during overhead work” and includes a photo of a work light being used by a worker in close proximity to hand tools.<sup>28</sup> An excerpt from the MAC TOOLS webpage shows what appears to be a mechanic using a light to illuminate the undercarriage of a car.<sup>29</sup> And one of the DEWALT webpages shows a technician using a DEWALT hand tool in an work area illuminated by a DEWALT work light.<sup>30</sup>

In addition to the third-party website evidence, the Examining Attorney submitted 13 third-party registrations intended to show that the respective goods are related.<sup>31</sup> Third-party registrations that are based on use in commerce and list the goods of both an applicant and registrant may have some probative value to the extent that they serve to suggest that the listed goods are of a type that may emanate from a single source. *In re Albert Trostel & Sons Co.*, Ser. No. 74186695, 1993 TTAB LEXIS 36, at \*7 (TTAB 1993); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(d)(iii) (May 2024).

In this case, however, three of the registrations, namely, Registration Nos. 6549601, 6592286, and 6996637, were issued under either § 66(a) of the Trademark

---

<sup>28</sup> See May 3, 2023, Final Action, at TSDR 40.

<sup>29</sup> See *id.* at 29.

<sup>30</sup> See Dec. 21, 2022, Non-Final Action, at TSDR 42.

<sup>31</sup> See May 3, 2023, Final Action, at TSDR 131-224. One of the registrations, Registration No. 5482736, was attached twice.

Serial No. 97340379

Act (15 U.S.C. § 1141f(a)) or § 44(e) of the Trademark Act (15 U.S.C. § 1126(e)), and their records contain no § 8 or § 71 affidavits or declarations of continuing use. Third-party registrations that are not based on use in commerce, such as those registered under §§ 66(a) or 44(e) of the Trademark Act, and for which no § 8 or § 71 affidavits or declarations of continuing use have been filed (15 U.S.C. §1058), as is the case here, have very little, if any, persuasive value. *See In re Info. Builders Inc.*, Ser. No. 87753964, 2020 TTAB LEXIS 20, at \*19 n.19 (TTAB 2020) (citing *Calypso Tech., Inc. v. Calypso Cap. Mgmt., LP*, Opp. No. 91184576, 2011 TTAB LEXIS 259, at \*28 n.15 (TTAB 2011); *In re Princeton Tectonics, Inc.*, Ser. No. 77436425, 2010 TTAB LEXIS 224, at \*8 (TTAB 2010)); *In re 1st USA Realty Prof'ls, Inc.*, Ser. No. 78553715, 2007 TTAB LEXIS 73, at \*5-6 (TTAB 2007).

Another two multi-class registrations, namely, Registration Nos. 4549647 and 5046498, indicate that the relevant Class 8 goods have been cancelled; we therefore have not considered them.<sup>32</sup> *See Made in Nature, LLC v. Pharmavite LLC*, Opp. Nos. 91223352, 91223683 & 9122738, 2022 TTAB LEXIS 228, at \*31 (TTAB 2022) (“A cancelled or expired registration has no probative value other than to show that it once issued.”); *In re Brown-Forman Corp.*, Ser. No. 78638129, 2006 TTAB LEXIS 476, at \*5 n.3 (TTAB 2006) (expired or cancelled registrations generally are evidence only of the fact that the registrations issued); TBMP § 1208.02 (“The Board may choose

---

<sup>32</sup> In a registration with multiple classes, each class stands on its own as if it were a separate registration. *See G&W Labs., Inc. v. G W Pharma Ltd.*, Opp. No. 91169571, 2009 TTAB LEXIS 2, at \*7 (TTAB 2009); *Electro-Coatings, Inc. v. Precision Nat'l Corp.*, 1979 TTAB LEXIS 77, at \*33 (TTAB 1979).



Serial No. 97340379

not to consider expired or cancelled third-party registrations.”). Similarly, we have not considered Registration No. 4640005 because it shows the relevant Class 8 goods (“screwdriver”) appearing within square brackets, which means that those goods have been deleted from the registration. *See* TMEP § 1402.12. And Registration No. 6839544 has limited relevance because it refers to some of the identified goods, but only in the context of Class 40 manufacturing services.

Of the remaining six registrations, four are of limited probative value because the relevant goods appear among an extensive list of other items in a variety of classes in addition to Classes 8 and 11.<sup>33</sup> *See In re Mucky Duck Mustard Co. Inc.*, Ser. No. 603019, 1988 TTAB LEXIS 11, at \*9 n.6 (TTAB 1988) (giving little consideration to two third-party registrations owned by “a large department store and an amusement or theme center, respectively, where a wide variety of goods and services are sold.”). That leaves two registrations: Registration Nos. 6313825 and 6916682. Registration No. 6313825 does not list Class 8 tools, but instead lists Class 7 air-operated impact wrenches and impact ratchets, along with Class 11 lights for vehicles and LED light assemblies.<sup>34</sup> Registration No. 6916682 lists both Class 8 wrenches and screwdrivers, and various Class 11 LED light apparatus, car light panels, and magnifying lamps. This very small sample consisting of two third-party registrations provides some minimal corroboration of the more probative third-party website evidence discussed

---

<sup>33</sup> *See* Registration Nos. 2327517, 5144621, 5482736, and 6245656.

<sup>34</sup> Despite the fact that this third-party registration lists Class 7 air-operated tools, we consider it relevant and probative to the extent it generally shows that tools such as wrenches and ratchets may be offered under the same mark as lighting apparatus and lamps.

above, but otherwise contributes little to our analysis.

While the Examining Attorney’s third-party registration evidence falls short, we find that the third-party website evidence is sufficient to establish that Applicant’s goods and Registrant’s goods are related such that they would be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same source if offered under confusingly similar marks.<sup>35</sup> Accordingly, the second *DuPont* factor favors a finding of likelihood of confusion.

### **C. Similarity of the Trade Channels**

Finally, we consider established, likely-to-continue channels of trade, the third *DuPont* factor. Because Applicant’s and Registrant’s identifications of goods have no restrictions as to channels of trade or classes of customers, we must presume that the identifications encompass all goods of the type described, that the goods travel through all normal channels of trade for such goods, and that they are available to all classes of purchasers of such goods. *See Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013); *Univ. of Kentucky v. 40-0, LLC*, Opp. No. 91224310, 2021 TTAB LEXIS 68, at \*32-33 (TTAB 2021) (“Because there are no limitations on the channels of trade or classes of consumers of the . . . [goods]

---

<sup>35</sup> The difference in the classification of goods between Applicant’s Class 8 goods and Registrant’s Class 11 goods is not relevant to the issue of relatedness. “The classification system was established for the convenience of the [Patent and Trademark] Office rather than to indicate that goods in the same class are necessarily related or that classification in different classes indicates that they are not related.” *NFL v. Jasper All. Corp.*, Opp. No. 91077966, 1990 TTAB LEXIS 37, at \*10 n.5 (TTAB 1990) (citing *In re Leon Shaffer Golnick Advert., Inc.*, 1974 TTAB LEXIS 313 (TTAB 1974)); *see also Detroit Ath. Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018) (quoting *Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 975 (Fed. Cir. 1993) (stating that classification is for the convenience of the Office and is “wholly irrelevant to the issue of registrability under section 1052(d), which makes no reference to classification”).

identified in the application, the relevant consuming public comprises all potential purchasers of . . . [such goods].”)

We find that the Examining Attorney’s third-party website evidence shows that Applicant’s Class 8 goods and Registrant’s Class 11 goods, at a minimum, travel in some of the same or overlapping channels of trade and are offered to overlapping consumers, e.g., potential consumers who seek to purchase both hand tools and lighting products for their particular projects.<sup>36</sup>

Thus, the third *DuPont* factor also weighs in favor of a finding of likelihood of confusion.

### III. Conclusion

Having considered all of the arguments and evidence of record and all relevant *DuPont* factors, we find that (1) the marks at issue are similar, (2) Applicant’s goods and Registrant’s goods are related, and (3) Applicant’s and Registrant’s goods travel in overlapping trade channels and are offered to overlapping classes of purchasers. We therefore conclude that confusion as to source is likely.

**Decision:** The refusal to register Applicant’s QUANTEX mark under Section 2(d) of the Trademark Act is affirmed.

---

<sup>36</sup> We acknowledge that the Internet is a pervasive medium—so much so that “the mere fact that goods and services may both be advertised and offered through the Internet is not a sufficient basis to find that they are sold through the same channels of trade.” *Parfums de Couer Ltd. v. Lazarus*, Opp. No. 91161331, 2007 TTAB LEXIS 36, at \*31-32 (TTAB 2007). But Internet evidence of the same retailers offering the same goods for sale under the same marks, as is the case here, is relevant evidence demonstrating that the goods can be encountered in overlapping channels of trade. *See In re I-Coat Co.*, Ser. Nos. 86802467, 86802618 & 86802733, 2018 TTAB LEXIS, at \*27 (TTAB 2018) (accepting third-party Internet website evidence showing applicant’s and registrant’s goods offered by same businesses under same marks as evidence of a common channel of trade).