

This Opinion is Not a  
Precedent of the TTAB

Mailed: April 28, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Quantum Group, LLC*  
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Serial No. 97540994  
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Lauren C. Concepcion of LZ Legal Services, LLC for Quantum Group, LLC.

Elizabeth Forrest, Trademark Examining Attorney, Law Office 114,  
Nicole Nguyen, Managing Attorney.

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

Opinion by Larkin, Administrative Trademark Judge:

Quantum Group, LLC (“Applicant”) seeks registration on the Principal Register  
of the mark shown below



for services ultimately identified as “On-line retail store services featuring cases and protectors for collectible trading cards” in International Class 35.<sup>1</sup>

The Examining Attorney has 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 so resembles the standard-character mark QUANTUM, registered on the Principal Register for “sports trading cards” in International Class 16,<sup>2</sup> as to be likely, when used in connection with the services identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney have filed briefs.<sup>3</sup> We affirm the refusal to register.<sup>4</sup>

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<sup>1</sup> Application Serial No. 97540994 was filed on August 9, 2022 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. Applicant describes its mark as follows: “The mark consists of a Roman helmet encompassing the letter ‘Q’ making the word ‘QUANTUM’. Underneath is the word ‘SPORTS’ with an omega sign replacing the ‘O’ and plus signs in-between the letters ‘S’, ‘P’, the omega sign, and the ‘R’.” Color is not claimed as a feature of the mark. Applicant has disclaimed the exclusive right to use SPORTS apart from the mark as shown.

<sup>2</sup> The cited Registration No. 4569298, which is owned by The Upper Deck Company, Inc. (“Upper Deck”), issued on July 15, 2014 and has been renewed.

<sup>3</sup> Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 WL 2853282, at \*1 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s brief appears at 6 TTABVUE and the Examining Attorney’s brief appears at 8 TTABVUE. There are attachments to the Examining Attorney’s brief that are not referred to in the body of the brief and appear to have been attached in error. 8 TTABVUE 15-21. We have ignored them.

<sup>4</sup> As part of an internal Board pilot program on possibly broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in Section 101.03(a) of the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) (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 page(s) on which they appear in the

## I. Prosecution History and Record on Appeal<sup>5</sup>

We briefly summarize below the prosecution history of the application because it provides useful background for our disposition of the appeal.

Applicant initially applied to register its mark for “on-line retail store services featuring collectibles, cases and protectors for collectible items, sports related items, cards, memorabilia, sports equipment, apparel, related merchandise.”<sup>6</sup> The Examining Attorney issued an Office Action refusing registration based on the cited registration at issue in this appeal and additional registrations of QUANTUM-formative marks,<sup>7</sup> and requiring amendment to Applicant’s identification of services.<sup>8</sup> The Examining Attorney made of record USPTO electronic records regarding the cited registrations,<sup>9</sup> and third-party webpages that she claimed showed that the same entity commonly provides both the relevant goods and the services identified in the application under the same mark.<sup>10</sup>

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Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites the Westlaw legal database (“WL”) and, in the initial full citation of a case, also identifies the number of the Board proceeding where it is available. The Board’s decisions that have issued since 2008 are available in TTABVUE and many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB Reading Room by entering the same information. Practitioners should also adhere to the practice set forth in TBMP § 101.03(a).

<sup>5</sup> Citations in this opinion to the file history of the application are to the downloadable .pdf versions of the documents in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”). *See In re Seminole Tribe of Fla.*, Ser. No. 87890892, 2023 WL 3751113, at \*1 n.1 (TTAB 2023).

<sup>6</sup> August 9, 2022 Application at TSDR 2.

<sup>7</sup> March 29, 2023 Office Action at TSDR 2-6.

<sup>8</sup> *Id.* at TSDR 7.

<sup>9</sup> *Id.* at TSDR 9-18.

<sup>10</sup> *Id.* at TSDR 19-140.

Applicant responded by arguing against the refusal, and amending its identification of services to “On-line retail store services featuring collectibles, cases and protectors for collectible items, sports related items, cards, memorabilia, sports equipment, apparel.”<sup>11</sup> Applicant made of record copies of the certificates of registration of the third-party marks QUANTUM OF SOLACE, QUANTUM MECHANICS and design, QUANTUM, and QUANTUM FORCE for various goods and services.<sup>12</sup>

The Examining Attorney then issued a second non-final Office Action in which she continued and maintained the Section 2(d) refusal to register and required further amendments to Applicant’s identification of services.<sup>13</sup> Applicant responded by arguing against the continued Section 2(d) refusal, and further amending its identification of services to “On-line retail store services featuring collectible trading cards and sports jerseys, cases and protectors for collectible trading cards, sports trading cards, sports jerseys, cards, sports themed memorabilia, sports equipment, apparel, and memorabilia related merchandise in the nature of signed sports trading card displays.”<sup>14</sup> Applicant made of record additional copies of the certificates of registration of the third-party QUANTUM-formative marks discussed above.<sup>15</sup>

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<sup>11</sup> June 29, 2023 Response to Office Action at TSDR 5-8.

<sup>12</sup> *Id.* at TSDR 9-16.

<sup>13</sup> August 14, 2023 Office Action at TSDR 1-4.

<sup>14</sup> September 15, 2023 Response to Office Action at TSDR 5-9.

<sup>15</sup> *Id.* at TSDR 10-17. It was unnecessary for Applicant to submit this evidence again.

The Examining Attorney then issued an Office Action accepting Applicant's amendment to its identification of services, but making final the Section 2(d) refusal with respect to the cited Registration No. 4569298.<sup>16</sup> The Examining Attorney made of record third-party webpages that she claimed show that trading cards and retail store services offering trading cards are commonly offered by the same entity under the same mark,<sup>17</sup> as well as third-party registrations of marks for the involved goods,<sup>18</sup> and third-party webpages discussing the meaning of the registered QUANTUM-formative marks made of record by Applicant.<sup>19</sup>

Applicant appealed and requested reconsideration. In its Request for Reconsideration, Applicant further amended its identification of services to cover "On-line retail store services featuring cases and protectors for collectible trading cards,"<sup>20</sup> and made of record pages from its website,<sup>21</sup> pages from third-party websites,<sup>22</sup> pages from the USPTO website and copies of the certificates of registration of various third-party marks,<sup>23</sup> a dictionary definition of the acronym SPQR,<sup>24</sup> and a Wikipedia entry captioned SPQR.<sup>25</sup>

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<sup>16</sup> December 22, 2023 Final Office Action at TSDR 2.

<sup>17</sup> *Id.* at TSDR 9-28, 55-60.

<sup>18</sup> *Id.* at TSDR 29-43.

<sup>19</sup> *Id.* at TSDR 44-54.

<sup>20</sup> March 21, 2024 Request for Reconsideration at TSDR 4.

<sup>21</sup> *Id.* at TSDR 27.

<sup>22</sup> *Id.* at TSDR 28-43.

<sup>23</sup> *Id.* at TSDR 44-109.

<sup>24</sup> *Id.* at TSDR 110.

<sup>25</sup> *Id.* at TSDR 111-14.

The Examining Attorney subsequently denied the Request for Reconsideration.<sup>26</sup> She made of record third-party webpages, including pages from the website of Upper Deck, the owner of the cited registration, that she claimed show that retailers sell both trading cards, and cases and protectors for trading cards, and that trading cards are commonly sold in protectors.<sup>27</sup>

## II. Analysis of Likelihood of Confusion Refusal

“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 [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the likelihood of confusion under Section 2(d) of the Trademark Act is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). *Charger Ventures*, 64 F.4th at 1379. We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

“Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because the fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characters of the goods [or services] and differences in the marks.”

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<sup>26</sup> September 30, 2024 Denial of Request for Reconsideration at TSDR 2.

<sup>27</sup> *Id.* at TSDR 4-79.

*DC Comics v. Cellular Nerd LLC*, Opp. No. 91246950, 2022 WL 17832492, at \*10 (TTAB 2022) (internal quotations and quotation marks omitted). Applicant devotes the argument portion of its brief to these two key factors. 6 TTABVUE 13-17.

Applicant also lists numerous third-party registrations and third-party websites in its brief under the heading “Applicant’s Evidence.” *Id.* at 9-12. This evidence is potentially relevant under the sixth *DuPont* factor, the “number and nature of similar marks in use on similar goods,” *DuPont*, 476 F.2d at 1361, but Applicant never discusses the sixth factor per se. Applicant’s only reference to these marks is in its discussion of the second factor, where Applicant argues that it “provided extensive evidence that a product and cases for that product are often sold under similar names by different entities, and yet coexistence is possible given the difference between a product and a protective case for the same,” 6 TTABVUE 16, and in Applicant’s discussion of the first factor, where Applicant argues that the “Examining Attorney acknowledges the distinct meanings created by adding a noun after ‘quantum’ in the Final Office Action, and asserts that coexisting registrations in the relevant industry – QUANTUM OF SOLACE and QUANTUM MECHANICS – convey different commercial impressions, ostensibly because of the added wording.” *Id.*

As noted above, we are required to consider all *DuPont* factors for which there is evidence and argument, but Applicant does not offer any argument under the sixth factor per se. Where an argument made by an applicant during prosecution is not maintained in the applicant’s appeal brief, it is ordinarily deemed forfeited. *In re Audemars Piguet Holding SA*, Ser. No. 90045780, 2025 WL 21318, at \*15 n.53 (TTAB

2025) (citing *In re ES LLC*, Ser. No. 77795412, 2012 WL 3224720, at \*2 n.2 (TTAB 2012) and TBMP Section 1203.02(g)). Here, however, the Examining Attorney responds to what she describes as Applicant’s argument “that coexistence is possible for similar marks that offer a product and a protective case for the product,” 8 TTABVUE 12 (citing 6 TTABVUE 16), and discusses various third-party marks made of record by Applicant. *Id.* at 12-13. Because the Examining Attorney addresses this evidence, we will also address it under the sixth *DuPont* factor for whatever probative value it may have. *See Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1363 (Fed. Cir. 2023) (third-party mark evidence should be considered under the sixth *DuPont* factor, not the first factor).

Before we turn to a discussion of the relevant *DuPont* factors, we note that in deciding this appeal, we are not writing on an entirely clean slate. Prior to filing the application at issue in this appeal, Applicant filed application Serial No. 97450466 (the “466 Application”) to register the standard-character mark QUANTUM SPORTS for services ultimately identified as “on-line retail store services featuring cases and protectors for collectible trading cards,” the same services at issue here. The Examining Attorney in this appeal was also assigned to the ’466 Application, and she ultimately issued a final refusal to register Applicant’s standard-character mark under Section 2(d) based on the same registration of QUANTUM cited against Applicant’s composite mark here.

Applicant appealed and pursued the appeal to a final decision. Two days after Applicant filed its appeal brief in this case, a different panel of the Board affirmed



the refusal to register the mark shown in the '466 Application. *In re Quantum Grp., LLC*, Ser. No. 97450466, 2024 WL 5058110 (TTAB Nov. 27, 2024) (non-precedential) (“*Quantum Grp.*”).<sup>28</sup> The Examining Attorney discusses the *Quantum Grp.* decision in her brief in this appeal, 8 TTABVUE 3, but Applicant did not file a reply brief and thus did not address the decision.

“Agency adjudications at the USPTO are entitled to res judicata and collateral estoppel effect,” *Iron Balls Int’l Ltd. v. Bull Creek Brewing, LLC*, Canc. No. 92079099, 2024 WL 2844425, at \*5 (TTAB 2024) (quoting *In re Vox Populi Registry Ltd.*, 25 F.4th 1348, 1352 n.2 (Fed Cir. 2022) (citing *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 160 (2015)), and the “Board has accordingly applied res judicata based on a prior ex parte decision to prevent an applicant from registering the same mark for the same goods or services where there was no change in circumstances.” *Id.* (citing *In re Solarwindow Tech., Inc.*, Ser. No. 87819480, 2021 WL 877769 (TTAB 2021)). Res judicata does not apply here, however, because the instant application does not seek registration of the same mark at issue in the '466 Application,<sup>29</sup> and we are not otherwise bound by the non-precedential *Quantum Grp.* decision because “[e]ach case is decided on its own facts, and each mark stands on its own merits.” *In re Korn Ferry*, Ser. No. 90890949, 2024 WL 3219482, at \*5 (TTAB 2024) (quotation and quotation marks omitted).

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<sup>28</sup> Applicant did not appeal the Board’s decision and the '466 Application became abandoned.

<sup>29</sup> We note in that regard that the Examining Attorney did not seek a remand of the instant application following the issuance of the *Quantum Grp.* decision to assert res judicata as a separate ground for refusal of registration.

At the same time, the record in *Quantum Grp.* appears to be very similar to the record here, the same registration was cited against Applicant's standard-character mark for the same services at issue here, and the Board's decision addresses many of the same arguments that Applicant makes here. Accordingly, we will look to the *Quantum Grp.* decision for guidance in our analysis of the applicable *DuPont* factors in this appeal.

**A. The Sixth *DuPont* Factor**

As in *Quantum Grp.*, 2024 WL 5058110, at \*2, we will begin with the issue of the possible conceptual and commercial weakness of the cited QUANTUM mark for sports trading cards because that issue may bear on the scope of protection to which the cited mark is entitled. "The weaker [the registrant's] mark, the closer an applicant's mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection." *Id.* (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015)).

"There are two prongs of analysis for a mark's strength under the sixth factor: conceptual strength and commercial strength." *Spireon*, 71 F.4th at 1362 (citation omitted). "Conceptual strength is a measure of a mark's distinctiveness" along the spectrum of distinctiveness, *id.*, while commercial strength "is the marketplace recognition value of the mark." *Id.* at 1363 (internal quotation and quotation marks omitted). Here, as in *Quantum Grp.*, "Applicant did not submit evidence of the

commercial strength or weakness of the cited mark.” *Quantum Grp.*, 2024 WL 5058110, at \*3.

With respect to conceptual strength, the cited registration issued on the Principal Register without the requirement of a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f),<sup>30</sup> and “a mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.” *Quantum Grp.*, 2024 WL 5058110, at \*4 (quoting *Tea Bd. of India v. Republic of Tea, Inc.*, Opp. No. 91118587, 2006 WL 2460188, at \*21 (TTAB 2006)). The QUANTUM mark in the cited registration is thus presumptively considered to be inherently distinctive.

Third-party registrations may be relevant to prove the conceptual weakness of a mark. *Spireon*, 71 F.4th at 1364. During prosecution, Applicant made of record copies of the certificates of registration of the following four third-party registrations of QUANTUM-formative marks:

- Registration No. 3693402 of QUANTUM OF SOLACE for “trading cards” in Class 16 and other goods and services in Classes 9, 14, 16, 25, 28, and 41;<sup>31</sup>
- Registration No. 5466988 of QUANTUM MECHANICS and a design consisting of the letters “QM” for various goods in Classes 13 and 28;<sup>32</sup>

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<sup>30</sup> March 29, 2023 Office Action at TSDR 9-10.

<sup>31</sup> June 29, 2023 Response to Office Action at TSDR 9-10.

<sup>32</sup> *Id.* at TSDR 11-12. This registration was cancelled on November 29, 2024, a few days after Applicant filed its brief. A cancelled registration has no probative value under the sixth

- Registration No. 5720112 of QUANTUM in standard characters for various goods in Class 28;<sup>33</sup> and
- Registration No. 6002192 of QUANTUM FORCE for various goods in Classes 25 and 28.<sup>34</sup>

Only the registration of QUANTUM OF SOLACE covers trading cards, the goods identified in the cited registration.<sup>35</sup> A single third-party registration of a QUANTUM-formative mark for trading cards with a different connotation than either QUANTUM or QUANTUM SPORTS “is a far cry from the large quantum of evidence of third-party use and registration that was held to be significant in both” *Juice Generation* and *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363 (Fed. Cir. 2015), two of the Federal Circuit’s seminal cases regarding third-party marks. *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at \*19 (TTAB 2021) (quoting *Inn at St. John’s*, 2018 WL 2734893, at \*4).<sup>36</sup> We find that Applicant did not show that the cited mark is conceptually weak, and it is therefore entitled to “the normal scope of protection to which inherently distinctive marks are entitled.” *Iron Balls*, 2024 WL 2844425, at \*15 (citation

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*DuPont* factor. *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 WL 2734893, at \*3 (TTAB 2018), *aff’d*, 777 Fed. App’x 516 (Fed. Cir. 2019).

<sup>33</sup> June 29, 2023 Response to Office Action at TSDR at TSDR 13-14.

<sup>34</sup> *Id.* at TSDR 15-16.

<sup>35</sup> Applicant also did not show that the goods and services identified in the two other subsisting registrations are related to sports trading cards, and those registrations thus have no probative value under the sixth *DuPont* factor. *See Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1325 (Fed. Cir. 2018); *In re i.am.symbolic, llc*, 866 F.3d 1315, 1328 (Fed. Cir. 2017); *Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 WL 2188890, at \*13 (TTAB 2022).

<sup>36</sup> “[I]n *Juice Generation*, there were at least twenty-six relevant third party uses or registrations of record . . . and in *Jack Wolfskin*, there were at least fourteen.” *In re Morinaga Nyugyo K.K.*, Ser. No. 86338392, 2016 WL 5219811, at \*9 n.8 (TTAB 2016) (citations omitted).

omitted). The sixth *DuPont* factor is neutral in our analysis of the likelihood of confusion.<sup>37</sup>

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

“Under the first *DuPont* factor, we consider ‘[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *Iron Balls*, 2024 WL 2844425, at \*11 (quoting *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, Opp. No. 91270181, 2024 WL 1638376, at \*5 (TTAB 2024) (quotation and quotation marks omitted).

“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.” *Id.* (quoting *Coach Servs., Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)). “The focus is on the recollection of the average purchaser, who normally ‘retains a general rather than a specific impression of marks.’” *Id.* (quoting *In re i.am.symbolic, llc*, Ser. No. 85916778, 2018 WL 3993582,

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<sup>37</sup> Applicant also made of record in its Request for Reconsideration numerous “pairs” of third-party registrations of marks that it argues show that “a product and cases for that product are often sold under similar names by different entities, and yet coexistence is possible given the difference between a product and a protective case for the same.” 6 TTABVUE 16. Only a few of the pairs of registrations include a registration covering trading cards and none of those registrations are paired with a registration covering protective cases for trading cards. Most importantly, all of the pairs of registrations involve marks that “are so different from the involved [QUANTUM] marks . . . as to have no probative value” under the sixth *DuPont* factor. *Embiid*, 2021 WL 2285576, at \*19.

at \*4 (TTAB 2018)). The average purchaser here is an online purchaser of cases and protectors for collectible trading cards.

The cited mark is QUANTUM in standard characters. Applicant's composite mark is reproduced again below:



Applicant's three-paragraph argument that the marks are dissimilar focuses entirely on their claimed differences in connotation. 6 TTABVUE 16-17. Applicant argues that its "QUANTUM SPORTS mark clearly refers to a type or element of sport (i.e., a 'quantum' one) whereas Registrant's mark refers to a discrete 'quantum,' or quantifiable unit of a particular medium." *Id.* at 16. According to Applicant, the Examining Attorney "acknowledge[d] the distinct meanings created by adding a noun after 'quantum' in the Final Office Action" and "asserts that coexisting registrations in the relevant industry – QUANTUM OF SOLACE and QUANTUM MECHANICS – convey different commercial impressions, ostensibly because of the added wording." *Id.* Applicant acknowledges its disclaimer of SPORTS in its mark, *id.*, but argues that when the involved marks are considered in their entireties, its mark "creates a distinct commercial impression that connotes minute elements of athletic endeavors and the nuance of sport," and that "[s]uch connotation and added wording is [sic] lacking in the Registration." *Id.* at 17.

The Examining Attorney responds that

the two marks share the identical wording, “QUANTUM” for related goods and services. As discussed further below, this word appears first in the marks and is the dominant feature of the marks. The additional descriptive wording, “SPORTS,” does not diminish the confusion caused by both marks starting with the word “QUANTUM,” nor does the fact that the applied-for mark features some design elements.

8 TTABVUE 5.

The Examining Attorney further argues that consumers are generally more inclined to focus on and remember the first portion of a mark, *id.* at 6 (citations omitted), and that the disclaimed word SPORTS in Applicant’s mark is less significant than the word QUANTUM when the marks are compared in their entireties. *Id.* (citations omitted). She also argues that the literal portion of Applicant’s composite mark should be accorded greater weight than the design portion in the comparison of the marks in their entireties, *id.* at 6-7, and that “despite featuring design elements, the large wording ‘QUANTUM’ remains the dominant portion of the applied-for mark.” *Id.* at 7.

The Examining Attorney also rejects Applicant’s argument that the shared word QUANTUM has different meanings in the two marks. She acknowledges that the addition of a word to QUANTUM may imbue the resulting mark with a different meaning, but denies that the disclaimed word SPORTS in Applicant’s mark does so. *Id.* at 7-8. She argues that “[b]ecause the word ‘SPORTS’ is descriptive of the field of the goods that applicant provides with its retail services, it is separable from the word ‘QUANTUM’” and that “consumers will see ‘QUANTUM’ as the brand name and

thereby perceive a connection between applicant's mark and the registered mark as belonging to the same brand." *Id.* at 8.

The Examining Attorney concludes that "[b]ecause the marks share the identical, and dominant, first term 'QUANTUM', and thereby create the same commercial impression, there is a likelihood of confusion as to the source of applicant's services." *Id.* at 8.

We begin our analysis by determining the dominant portion of Applicant's composite mark. The marks must be compared in their entireties, but "in articulating reasons for reaching a conclusion on the issue of confusion, 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." *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018) (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

Applicant's mark contains a design element, but "[i]n the case of marks, such as Applicant's, consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods [or services]." *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 WL 1620989, at \*2 (TTAB 2018) (citations omitted). This general principle applies here, where the primary



function of the design element of Applicant's mark is to form the first letter "Q" in the word QUANTUM.<sup>38</sup>

As between the words QUANTUM and SPORTS in Applicant's mark, the word QUANTUM appears in a larger font above the stylized word SPORTS,<sup>39</sup> and the word SPORTS has been disclaimed.<sup>40</sup> Given the prominence and positioning of the word QUANTUM, and the fact that the word SPORTS has little or no source-identifying significance in the context of the involved services, we find that the word QUANTUM is the dominant portion of Applicant's mark. *See, e.g., Aquitaine Wine USA*, 2018 WL 1620989, at \*2 (citations omitted). We turn now to the required comparison of the marks in their entireties, giving greater weight in that comparison to the word QUANTUM in Applicant's mark than to its design element or the word SPORTS.

With respect to the similarity of the marks in appearance, "[s]ince [the cited] mark is a standard character mark, we must consider that the . . . mark may be presented in any font style, size or color, including the same font, size and color as the literal portions of Applicant's mark" because the "rights associated with a standard character mark reside in the wording per se and not in any particular font style, size or color." *Id.* at \*5 (citing *Citigroup Inc. v. Cap. City Bank Grp.*, 637 F.3d 1344, 1352 (Fed. Cir. 2011)). *See also In re Viterra Inc.*, 671 F.3d 1358, 1363 (Fed. Cir. 2012).

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<sup>38</sup> As noted above, Applicant describes its mark as "consist[ing] of a Roman helmet encompassing the letter 'Q' making the word 'QUANTUM'."

<sup>39</sup> In *Quantum Grp.*, the Board found that "the significance of the term QUANTUM in Applicant's mark [QUANTUM SPORTS in standard characters] is reinforced by its location as the first word in the mark." *Quantum Grp.*, 2024 WL 5058110, at \*5 (citations omitted).

<sup>40</sup> Applicant voluntarily disclaimed the exclusive right to use SPORTS when it filed its application. August 9, 2022 Application at TSDR 2.

Accordingly, for purposes of our comparison of the marks in appearance, we must assume that the cited mark QUANTUM could be depicted in the same font as the word QUANTUM in Applicant's mark.<sup>41</sup>

We acknowledge that there are visual differences between Applicant's mark, which contains a design element and stylized fonts, and the cited mark, whether depicted in block letters or in the font visualized immediately above, but we must compare the marks "in light of the fallibility of memory" and "not on the basis of side-by-side comparison." *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 685 (CCPA 1977)). A consumer with a general impression of the cited QUANTUM mark who separately encounters Applicant's composite mark may notice the design elements and stylization in Applicant's mark, but we find that the marks are more similar than dissimilar in appearance because of the presence of the word QUANTUM in both marks.

With respect to sound, the cited mark would be verbalized as "Quantum" and Applicant's mark would be verbalized as "Quantum Sports" or possibly as "Quantum" alone.<sup>42</sup> In either case, the marks are very similar in sound due to the presence of the

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<sup>41</sup> In *Aquitaine Wine USA*, the Board held that when we compare "a standard character mark to a word + design mark for Section 2(d) purposes, we will consider variations of the depictions of the standard character mark **only with regard to** 'font style, size, or color' of the 'words, letters, numbers, or any combination thereof.'" *Aquitaine Wine USA*, 2018 WL 1620989, at \*6 (citations omitted) (emphasis in bold here in italics in the original). Accordingly, we will not assume here that the cited mark could incorporate the design element that forms the letter "Q" in Applicant's mark.

<sup>42</sup> The Board has recognized "the penchant of consumers to shorten marks." *In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 WL 1045677, at \*3 (TTAB 2016) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 815 (CCPA 1978) ("the users of language have a universal habit of

word “Quantum” in each mark. *See Bay State Brewing*, 2016 WL 1045677, at \*4 (finding that the marks TIME TRAVELER and TIME TRAVELER BLONDE were “virtually identical” in sound).

Finally, with respect to meaning, the only form of dissimilarity claimed by Applicant, Applicant made the same argument in *Quantum Grp.* that it makes here, namely, that the word QUANTUM has different meanings in the two marks. But as in *Quantum Grp.*, “there is no evidence here, or other reason to find, that the [word QUANTUM] has one meaning when used with [sports trading cards], and a second and different meaning when used with [on-line retail store services featuring cases and protectors for collectible trading cards] based on the nature of the respective goods [and services].” *Embiid*, 2021 WL 2285576, at \*9.<sup>43</sup> We agree with the Board’s analysis in *Quantum Grp.* that “the marks appear to connote an element or amount as applied to both.” *Quantum Grp.*, 2024 WL 5058110, at \*5. As in *Quantum Grp.*, “[w]e recognize the differences between the QUANTUM SPORTS [and design] and QUANTUM marks. Nonetheless, viewing the marks as a whole, we find purchasers

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shortening full names from haste or laziness or just economy of words”) (Rich, J., concurring)). In *Bay State Brewing*, a case involving the marks TIME TRAVELER and TIME TRAVELER BLONDE for beer, the Board found that it would be reasonable for many consumers to “drop the highly descriptive/generic term ‘Blonde’ when calling for applicant’s goods.” *Bay State Brewing*, 2016 WL 1045677, at \*3. It would similarly be reasonable here for consumers to shorten Applicant’s mark to “Quantum” when verbalizing it given that “Sports” has been disclaimed.

<sup>43</sup> In *Quantum Grp.*, the Board found that “the record does not support a finding that consumers of sports trading cards and protectors therefor will make distinctions between the putative meanings of the QUANTUM and QUANTUM SPORTS marks. Simply put, Applicant has introduced no evidence that consumers will perceive QUANTUM SPORTS as connoting an element of sports while QUANTUM will connote a quantifiable unit of a particular medium, as applied to the identified goods and services.” *Quantum Grp.*, 2024 WL 5058110, at \*5.

could mistakenly believe the marks are variations of each other, or that QUANTUM is a shortened version of QUANTUM SPORTS, pointing to a common source.” *Id.* at \*6.

The marks are “similar in appearance, sound and meaning, and, overall, create similar commercial impressions.” *Id.* The first *DuPont* factor supports a conclusion that confusion is likely.

**C. Similarity or Dissimilarity of the Goods and Services, Channels of Trade, and Classes of Consumers**

“The second *DuPont* factor considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration . . . .’” *Detroit Athletic Co.*, 903 F.2d at 1306. “This factor considers whether ‘the consuming public may perceive [the respective goods or services] as related enough to cause confusion about the source or origin of the goods or services.’” *St. Helena Hosp.*, 774 F.3d at 752 (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)).

“The [goods and] services need not be identical or even competitive to find a likelihood of confusion.” *In re OSF Healthcare Sys.*, Ser. No. 88706809, 2023 WL 6140427, at \*4 (TTAB 2023) (quoting *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at \*2 (TTAB 2019) (citation omitted)). “They need only be ‘related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] emanate from the same source.’” *Country Oven*, 2019 WL 6170483, at \*2 (quoting *Coach Servs.*, 668 F.3d at 1369 (internal quotation omitted)).

The application covers services identified as “on-line retail store services featuring cases and protectors for collectible trading cards,” while the cited registration covers goods identified as “sports trading cards.” Applicant argues that it “does not sell trading cards, and Registrant does not sell cases or protectors for trading cards.” 6 TTABVUE 13. Applicant dismisses the Examining Attorney’s Internet evidence purporting to show relatedness of the involved goods and services, *id.* at 13-14, because “none of the Examining Attorney’s evidence shows **branded trading cards** sold under the same mark as **branded protective card sleeves.**” *Id.* at 14 (emphasis in bold here in italics in Applicant’s brief). According to Applicant, “[a]ll of the evidence shows trading card cases manufactured by one entity, and the cards themselves manufactured by another separate entity.” *Id.* at 15.<sup>44</sup> Applicant also argues that even if the goods and services are “used together,” that alone does not establish their relatedness. *Id.* at 14-15 (citations omitted). Applicant concludes that

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<sup>44</sup> Applicant argues that “[w]hile the Examining Attorney included screenshots of cards sold encased in a protective cover, these cello packs (or cellophane packs) function similarly to packing peanuts or bubblewrap – protective short term transport packaging that goods come encased in that should be replaced shortly after unpacking,” but that the “temporary protective packaging shown in the Examining Attorney’s most persuasive evidence files falls far short of the protective trading card cases sold by companies (including the Applicant) that are specially manufactured for long term storage and protection. This temporary packaging is akin to plastic enclosures shipped with cell phones to prevent damage on transport, or the clear film on computers intended for removal upon receipt by the end consumer. The Examining Attorney has failed to show **branded trading cards** sold in **branded protective cases** intended for long term storage and transport protection. 6 TTABVUE 15 (emphasis in bold here in italics in Applicant’s brief). The Board implicitly rejected this argument in *Quantum Grp.* by crediting as evidence of relatedness third-party websites that sold trading cards in protective cases or protective packaging, *Quantum Grp.*, 2024 WL 5058110, at \*6-7, and we see no reason to disagree with the panel’s analysis.

“[a]t most, the goods and services here are very minimally related and do not overlap.”

*Id.* at 16.

The Examining Attorney responds that

it is clear from the evidence of record that applicant’s services “On-line retail store services featuring cases and protectors for collectible trading cards” are closely related to registrants’ [sic] goods, “Sports trading cards” as applicant’s retail store services feature a good that is highly complementary to registrant’s goods. The use of similar marks on or in connection with both products and retail-store services has been held likely to cause confusion where the evidence showed that the retail-store services featured the same type of products.

8 TTABVUE 9 (citations omitted).

The Examining Attorney also argues that

[w]here evidence shows that the goods at issue have complementary uses and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks.

*Id.* at 9-10 (citations omitted).

The Examining Attorney points to websites “show[ing] trading cards for sale already in protective cases,” *id.* at 11, and that “trading cards and trading card protectors are often sold by the same retail source.” *Id.* (record citations omitted). She also quotes the Board’s findings in the *Quantum Grp.* decision that (1) “trading cards and cases and protectors therefor would obviously be used together, and thus are complementary;” (2) “cases and protective sleeves for trading cards serve little purpose without trading cards themselves, and the value of trading cards is enhanced

by their protection in such sleeves and cases;” (3) “Applicant’s online retail services supplying protective cases and sleeves for trading cards are related on their face to the trading cards identified in the cited registration;” and (4) “[c]onsumers would expect that sports trading cards and online retail store services featuring protectors for trading cards could emanate from the same source.” *Id.* at 12 (quoting *Quantum Grp.*, 2024 WL 5058110, at \*7).

It is self-evident, as the Board found in *Quantum Grp.*, that the raison d’être of the “cases and protectors for collectible trading cards” featured in Applicant’s “on-line retail store services” is to enclose and protect “collectible trading cards,” which are broadly described and encompass the “sports trading cards” identified in the cited registration.<sup>45</sup> Indeed, Applicant’s website states that “our company is dedicated to providing top-quality accessories for the trading card community,” including “carrying cases, magnifying glasses, and top loaders” and “everything you need to protect and display your collection.”<sup>46</sup> As in *Quantum Grp.*, we find that “Applicant’s online retail services supplying protective cases and sleeves for trading cards are related on their face to the trading cards identified in the cited registration” and that “[c]onsumers would expect that sports trading cards and online retail store services featuring protectors for trading cards could emanate from the same source.” *Quantum Grp.*, 2024 WL 5058110, at \*7.

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<sup>45</sup> We note in that regard that the masthead of Applicant’s website describes the goods that it sells as “Sports Card Cases.” September 30, 2024 Denial of Request for Reconsideration at TSDR 74.

<sup>46</sup> March 21, 2024 Request for Reconsideration at TSDR 27.

Here, as in *Quantum Grp.*, “the relatedness of the goods and services is corroborated by the [record] evidence.” *Id.* The record shows that online sellers of cases and protectors for collectible trading cards often sell sports trading cards.<sup>47</sup> We summarize below examples of such sellers in addition to the cited registrant Upper Deck:<sup>48</sup>

- Topps offers sports trading cards and card sleeves on its website;<sup>49</sup>
- Ultra • Pro offers sports trading cards and card sleeves on its website;<sup>50</sup>

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<sup>47</sup> Applicant suggests that unless an online retailer of sports trading card cases and protectors also sells sports trading cards under the retailer’s service mark, those goods and services are not related. 6 TTABVue 14. We disagree. The relevant inquiry is whether consumers of sports trading cards sold under the QUANTUM mark are likely to believe that the owner of that mark also provides, or sponsors or authorizes the company operating under Applicant’s service mark to provide, online retail store services selling complementary protective goods. *See Quantum Grp.*, 2024 WL 5058110, at \*6-7. The record shows that Upper Deck, the owner of the cited registration, provides online retail store services selling card sleeves as well as its own branded sports trading cards. September 30, 2024 Denial of Request for Reconsideration at TSDR 28-35.

<sup>48</sup> As noted above, the Board discussed the same evidence in *Quantum Grp.* and described a few other websites in which sports trading cards were sold in decorative cases and protective sleeves. *Quantum Grp.*, 2024 WL 5058110, at \*6-7.

<sup>49</sup> March 29, 2023 Office Action at TSDR 68-73.

<sup>50</sup> September 30, 2024 Denial of Request for Reconsideration at TSDR 4-11. The Ultra • Pro website describes sports trading cards and card sleeves as goods that are “Frequently Bought Together.” *Id.* at TSDR 5. Applicant also made of record pages from Google Shopping showing Ultra • Pro sleeves and protectors. May 21, 2024 Request for Reconsideration at TSDR 32-37.



- Dave & Adam’s offers sports trading cards and magnetic card holders, which we deem to be a form of “protector[ ] for collectible trading cards,”<sup>51</sup> on its website;<sup>52</sup>
- Leaf offers sports trading cards and card sleeves on its website;<sup>53</sup> and
- Midwest Cards offers sports trading cards and card sleeves on its website.<sup>54</sup>

This evidence shows that “third parties may offer both Applicant’s services and the goods identified in the cited registration under the same trademarks and trade names,” *Quantum Grp.*, 2024 WL 5058110, at \*7, and corroborates the intrinsic relatedness of the involved goods and services. We find that the second *DuPont* factor supports a conclusion that confusion is likely.

We agree with the Board in *Quantum Grp.* that “[w]ith regard to the third *DuPont* factor, the similarity of the trade channels in which the goods [and services] are encountered, the above website evidence demonstrates that third parties provide the goods and services at issue under the same trademarks,” *Quantum Grp.*, 2024 WL 5058110, at \*7, and that “the evidence of record demonstrates that both Applicant’s services and the registrant’s goods may be encountered by the same

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<sup>51</sup> Applicant’s identification of services refers to “protectors for collectible trading cards.” In determining that the goods identified as “magnetic card holders” on the Dave & Adam’s website are a form of “protectors,” we have given Applicant’s identification of services its “full scope,” *Country Oven*, 2019 WL 6170483, at \*5, bearing in mind that goods and services appearing on third-party websites “may be described in colloquial language that does not track the technical language of acceptable identifications of goods and services in applications and registrations, including those involved here.” *OSF Healthcare Sys.*, 2023 WL 6140427, at \*10. We note in that regard that the Dave & Adam’s website states that the magnetic card holders “feature recessed arrowhead corners to **protect** the card’s corners.” September 30, 2024 Denial of Request for Reconsideration at TSDR 18 (emphasis added).

<sup>52</sup> September 30, 2024 Denial of Request for Reconsideration at TSDR 12-23.

<sup>53</sup> *Id.* at TSDR 24-27.

<sup>54</sup> *Id.* at TSDR 61-71.

classes of consumers under the same marks in common trade channels, namely, websites providing both trading cards and cases and sleeves therefor.” *Id.*<sup>55</sup> The third *DuPont* factor also supports a conclusion that confusion is likely.

#### **D. Summary**

The key first and second *DuPont* factors, and the third factor, support a conclusion that confusion is likely, while the sixth factor is neutral. The marks are more similar than dissimilar, the goods and services are intrinsically related and are frequently offered by the same entity, and the channels of trade and classes of consumers for the goods and services at least overlap. We find that consumers who have a general recollection of the cited QUANTUM mark for sports trading cards who separately encounter Applicant’s composite mark, which is dominated by the word QUANTUM and is used in connection with online retail store services featuring cases and protectors for collectible trading cards, are likely to believe mistakenly that those services originate with, or are licensed or sponsored by, the owner of the cited QUANTUM mark.

**Decision:** The refusal to register is affirmed.

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<sup>55</sup> It is again self-evident, and confirmed by the record, that the class of online consumers of “cases and protectors for collectible trading cards” would consist primarily if not exclusively of owners of sports trading cards.