

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Mrs. Claus Cookie Company, LLC*  
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Serial Nos. 97550335, 97550357, and 97550571  
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Carl Mann of Carl Mann Law Firm  
for Mrs. Claus Cookie Company, LLC.

Morgan Meyers, Trademark Examining Attorney, Law Office 117,  
Cynthia Tripi, Managing Attorney.

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Before Kuhlke, Dunn, and English,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Mrs. Claus Cookie Company, LLC (Applicant) seeks registration on the Principal Register of the three marks MRS. CLAUS (App. Serial No. 97550335<sup>1</sup>), MRS. CLAUS

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<sup>1</sup> Filed August 16, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere of the International Class 30 goods since at least as early as July 25, 1997, first use anywhere of the International Class 41 services since at least as early as September 17, 1998, and use in commerce of both the goods and services since at least as early as September 17, 1998. The term MRS. has been voluntarily disclaimed. *See* August 16, 2022 Application, TSDR 7.

References to the application are to the downloadable .pdf version of documents available from the USPTO's TSDR (Trademark Status and Document Retrieval) database. The

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COOKIES (App. Serial No. 97550357<sup>2</sup>), and MRS. CLAUS COOKIE COMPANY (App. Serial No. 97550571)<sup>3</sup>, all in standard characters and for the same goods and services:

Arrangements of candy; Bakery goods and dessert items, namely, cakes, cookies, pastries, candies, and frozen confections for retail and wholesale distribution and consumption on or off the premises; Bread flavored with spices; Brownies; Candy; Candy canes; Candy containing alcoholic beverage content and flavor; Candy with caramel; Chocolate candies; Chocolate covered pretzels; Chocolate for confectionery and bread; Chocolates and chocolate-based ready to eat candies and snacks; Confectionery for decorating Christmas trees; Confectionery in the form of dessert mousses; Confectionery, namely, candy and chocolate; Cookies; Cookies with nuts; Cupcakes; Frozen confectionery; Frozen confectionery containing ice cream; Gift baskets containing candy; Gingerbread; Hollow chocolate forms filled with ganache; Scones; Vegan cookies, in International Class 30.

Education services, namely, providing live and on-line classes in the field of culinary arts; Educational services, namely, conducting live and on-line classes, seminars, workshops, and social and cultural events in the field of culinary arts, in International Class 41.

The applications were assigned to the same Trademark Examining Attorney and all were refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's marks, as applied to the goods and services


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TTABVUE citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

<sup>2</sup> Filed August 16, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere of the International Class 30 goods since at least as early as July 25, 1997, first use anywhere of the International Class 41 services since at least as early as September 17, 1998, and use in commerce of both the goods and services since at least as early as September 17, 1998. The term COOKIES is disclaimed.

<sup>3</sup> Filed August 16, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere and in commerce for the International Class 30 goods since at least as early as September 8, 1998 and first use anywhere and in commerce for the International Class 41 services since at least as early as September 17, 1998. The term COOKIE COMPANY is disclaimed.

identified in the respective applications, so resemble the registered marks MRS.

CLAUS (in standard characters) and , both for “Yeast; Baking powders; Baking spices; Confectionery chips for baking,” in International Class 30,<sup>4</sup> owned by the same Registrant and on the Principal Register, as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final in each application, Applicant requested reconsideration. After the Examining Attorney denied the request for reconsideration in each application, Applicant appealed to this Board.

These appeals present common questions of law and fact and the records are substantially similar.<sup>5</sup> In the interest of judicial economy, we consolidate the cases and decide them in this single opinion. *See In re Pohl-Boskamp GmbH & Co. KG*, 2013 TTAB LEXIS 7, at \*3;<sup>6</sup> TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (June 2024). We have considered all arguments and evidence filed in each case. Because the briefs make in essence the same arguments

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<sup>4</sup> Registration No. 6909401 for the mark in standard characters, and Registration No. 6909402 for the mark in stylized form, both issued November 29, 2022. Both registrations include a second class of goods not cited as a basis for refusal.

<sup>5</sup> In fact, the dates that the Office actions issued and the Responses were filed are the same in each application.

<sup>6</sup> As part of an internal Board pilot, the citation form in this opinion follows TBMP 101.03. 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 only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the LEXIS legal database.

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with respect to each application, we will cite to the briefs in Application Serial No. 97550335 for the mark MRS. CLAUS.

We affirm the refusal to register with respect to the International Class 30 goods, and reverse with respect to the International Class 41 services.

## **I. Evidentiary Issue**

Before proceeding to the merits of the refusal, we address an evidentiary matter. In Applicant's brief for each application Applicant requests that the Board take judicial notice (i) that "both Target and Whole Foods Market are retailers of vastly more types of goods than those of Applicant and Registrant;" (ii) of six third-party registrations not of record; and (iii) that "the fictional 'Mrs. Claus' is represented throughout commerce on all manner of goods, including figurines, ornaments, costumes, drawings, recipes, cocktails, and movies."<sup>7</sup> The Examining Attorney did not mention the first request, and objected to the other two requests.<sup>8</sup>

With respect to the first and third requests, we decline to take judicial notice because they involve neither facts that are commonly known nor facts not subject to reasonable dispute. *See* Fed. R. Evid. 201(b); *In re tapio GmbH*, 2020 TTAB LEXIS 483, at \*37 n.39 (TTAB 2020) (Board declined to take judicial notice "that TAPIO identifies an East Finnish forest spirit god of Finnish mythology, because we do not believe that this a commonly known fact, at least in the United States").

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<sup>7</sup> 4 TTABVUE 18, 21, 22.

<sup>8</sup> 6 TTABVUE 10-11.

With respect to the request to take judicial notice of registrations, the proper procedure for an applicant or examining attorney to introduce evidence after an appeal has been filed is to submit a written request with the Board to suspend the appeal and remand the application for further examination. *See* Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); TBMP § 1207.02 and authorities cited therein. We do not allow an applicant or examining attorney to circumvent the procedure by requesting judicial notice of registrations not in the record. *See In re Weiss*, 2024 TTAB LEXIS 277, at \*3 (“Although the Court of Appeals for the Federal Circuit has exercised its discretion to take judicial notice of a third party’s registration, the Board’s well-established practice is not to take judicial notice of third-party registrations when an applicant or examining attorney requests that such notice be taken during the course of an appeal.”) (internal citation omitted).

However, Applicant’s reply brief points out that because its November 7, 2023 request for reconsideration lists four third-party registrations for MRS. CLAUS marks, and the Examining Attorney’s denial of the request failed to advise that the listing is insufficient to make the registrations of record, the Examining Attorney has waived any objection to consideration of the listing of the four registrations.<sup>9</sup> We agree. *In re Broyhill Furniture Indus. Inc.*, 2001 TTAB LEXIS 612, at \*6 n.3 (“[T]he objection is considered to have been waived since it was not interposed in response to applicant’s reliance on such listing in its response to the initial Office Action. Accordingly, and while we do not have the file history for any of the third-party

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<sup>9</sup> 7 TTABVUE 3.

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registrations or know whether any of such registrations issued on the Supplemental Register instead of the Principal Register, applicant's evidence regarding certain third-party registrations has been considered for whatever limited probative value such evidence may have."), *aff'd*, 731 F.3d 1326 (Fed. Cir. 2013). Accordingly, while, in accord with our practice, we will not take judicial notice of the registrations, we will consider the abbreviated information about the four registrations provided by the Applicant in its requests for reconsideration.

## **II. Likelihood of Confusion Refusal**

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). "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, 1319 (Fed. Cir. 2018). "Not all of the *DuPont* factors are relevant to every case," and we consider each *DuPont* factor for which there are arguments and evidence. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018).

Because the goods in the cited registrations are identical, we will focus our analysis of the likelihood of confusion on the registered standard-character mark MRS. CLAUS (Registration No. 6909401). If confusion is likely between the mark MRS. CLAUS in standard characters and Applicant's marks, there is no need for us to consider the likelihood of confusion with the registered mark MRS. CLAUS in

stylized form, while if there is no likelihood of confusion between the mark MRS. CLAUS in standard characters and Applicant's marks, then there would be no likelihood of confusion with the registered mark MRS. CLAUS in stylized form. See *In re Max Cap. Grp. Ltd.*, 2010 TTAB LEXIS 1, at \*4-5.

**A. Number and nature of similar marks in use on similar goods and services**

We first address the sixth *DuPont* factor, which considers the commercial and conceptual strength of Registrant's mark and the scope of protection to which it is entitled. *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) ("There are two prongs of analysis for a mark's strength under the sixth factor: conceptual strength and commercial strength.").

With respect to commercial strength, "[t]he sixth *DuPont* factor allows Applicant to contract the scope of protection given a registered mark by adducing evidence of the number and nature of similar marks in use on similar goods." *Monster Energy Co. v. Lo*, 2023 TTAB LEXIS 14, at \*27 (citation omitted). "The purpose of introducing evidence of third-party use is to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions." *Omaha Steaks Int'l*, 908 F.3d at 1324 (internal citation omitted). In this case there is no record evidence of third-party similar marks in use on similar goods.

Conceptual strength is a measure of the registered mark's distinctiveness. *Spireon, Inc.*, 71 F.4th at 1362.<sup>10</sup> A mark registered on the Principal Register without a claim of acquired distinctiveness is presumed to be inherently distinctive. *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F4th 129, \*146 (Fed. Cir. 2021). The common term MRS. CLAUS is undefined on this record but is comprised of two recognizable terms with no descriptive or suggestive meaning as applied to the goods of Registrant. We find the registered mark to be arbitrary; a "known [term] used in an unexpected or uncommon way." *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340 (Fed. Cir. 2004). *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372 (Fed. Cir. 2005) (an arbitrary term is "conceptually strong as a trademark").

Under the sixth *DuPont* factor, evidence of third-party registrations for similar goods is relevant to prove that a term in a mark carries a suggestive or descriptive connotation in the relevant industry, and is conceptually weak for that reason. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015). Applicant argues that the ordinary protection accorded the inherently distinctive registered MRS. CLAUS mark should be contracted based on the evidence shown below:<sup>11</sup>

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<sup>10</sup> As is usually the case in an ex parte appeal, the briefs do not address the fame of the registered mark under the fifth *DuPont* factor. *See In re i.am.symbolic, LLC*, 2015 TTAB LEXIS 369, at \*22 ("Because of the nature of the evidence required to establish the fame of a registered mark, the Board normally does not expect the Examining Attorney to submit evidence as to the fame of the cited mark in an ex parte proceeding."), *aff'd*, 866 F.3d 131 (Fed. Cir. 2017).

<sup>11</sup> 4 TTABVUE 21-22. As discussed, the Board denied Applicant's request to take judicial notice of the listed registrations, so our consideration is limited to the information set forth in Applicant's requests for reconsideration.



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Registration 3780756, Mrs. Claus' Candy Kitchen for retail store services featuring fudge and candies.

Registration 7150143, Big Red Santa & Mrs. Claus for production of personalized, holiday themed video messages.

Registration 7008002, Mrs. Claus' for edible chews for animals; edible pet treats; pet food.

Registration 3935577, Russell Stover Note... Mrs. S. Claus Wife of Santa... Solid Milk Chocolate... for chocolate bars.

As discussed, the registered mark is MRS. CLAUS for “Yeast; Baking powders; Baking spices; Confectionery chips for baking.” Because there is no evidence that the registered food ingredients are similar or related to the services for production of personalized, holiday themed video messages, or edible chews for animals, edible pet treats, pet food, these registered marks do not contribute to any weakness of the registered mark MRS. CLAUS for the identified food ingredients. *See Omaha Steaks Int'l*, 908 F.3d at 1325 (assessing strength of the mark, “the Board relied on a diverse range of third-party products, such as ‘popcorn,’ ‘wine,’ ‘oriental foods,’ and ‘alcoholic beverages.’ But these goods bear no relationship to meat or meat-based products.”).

While the registered food ingredients could be used to create fudge and candies, we see no inherent relationship between food ingredients and retail store services featuring fudge and candies identified in Registration No. 3780756. *Compare In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at \*6 (“Thus, we must consider Applicant’s [retail bakery shop] services to encompass a broad spectrum of bakery products that quite obviously includes goods of the type identified in the cited registration, i.e., ‘bread buns.’”).

This leaves the single registration described as “Russell Stover Note... Mrs. S. Claus Wife of Santa... Solid Milk Chocolate... for chocolate bars.” A single registered third-party mark is “a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant in both *Jack Wolfskin* and *Juice Generation*.” *Sabhnani v. Mirage Brands, LLC*, 2021 TTAB LEXIS 464, at \*32-33 (quotation and quotation marks omitted). In addition, the ellipses make clear that Applicant states only part of the third-party mark. Even the segment of the mark described by Applicant is only somewhat similar to the mark MRS. CLAUS. The third-party registered mark is not as similar to the cited mark as the applied-for mark, and thus undermines its probative value in demonstrating the weakness of the registered mark. *See Id.* at \*32 (“[W]hile the registered marks all contain the word ‘MIRAGE,’ they contain additional elements that cause many of them to be less similar to Petitioner’s mark than Respondent’s marks are.”).

In short, Applicant has not presented evidence sufficient to have any impact on the scope of protection accorded the registered mark MRS. CLAUS.

We find *DuPont* factor six to be neutral.

**B. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression**

The first *DuPont* factor requires consideration of “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361. The proper test regarding similarity “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.” *Coach Servs., Inc.*, 668 F.3d at 1368 (internal quotation marks and citation omitted). The registered mark is MRS. CLAUS in standard characters, and Applicant’s marks are MRS. CLAUS, MRS. CLAUS COOKIES, and MRS. CLAUS COOKIE COMPANY, all in standard characters.

Applicant’s standard character mark MRS. CLAUS is identical to the cited standard character mark MRS. CLAUS.<sup>12</sup> To form its other two marks Applicant has taken Registrant’s arbitrary MRS. CLAUS mark in toto, and has added two highly descriptive terms. Applicant’s identification of goods and services specifies that the marks MRS. CLAUS COOKIES and MRS. CLAUS COOKIE COMPANY are used with cookies and classes for culinary arts, and culinary arts include making cookies. Accordingly, the identification of goods and services makes clear the highly descriptive nature of COOKIES and COOKIE COMPANY as applied to the goods and services. *See Monster Energy Co.*, 2023 TTAB LEXIS 14, at \*48 (“In coming to this conclusion [that the term MONSTER contributes the most to the overall commercial impression of both marks], we find that the term ICE in Applicant’s mark [] appears in the recitation of services, and is descriptive and disclaimed.”). Moreover, the terms

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<sup>12</sup> Unlike the case cited by the Applicant (4 TTABVUE 12) in which the court found the term COACH had multiple definitions, and different definitions would be applied in connection with different goods, Applicant has presented no evidence to support its argument that MRS. CLAUS has a different connotation when used in connection with the identified goods and services. *Compare Coach Servs.v. Triumph Learning*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (“Opposer’s COACH mark, when applied to fashion accessories is clearly either arbitrary or suggestive of carriage or travel accommodations [e.g., stagecoach, train, motor coach, etc.] thereby engendering the commercial impression of a traveling bag [e.g., a coach or carriage bag]. On the other hand, applicant’s COACH marks call to mind a tutor who prepares a student for an examination.”).

COOKIES and COOKIE COMPANY have been disclaimed in their respective marks, which also is evidence that the terms may weigh less heavily in forming the commercial impression of the marks. *See In re Detroit Athletic Co.*, 903 F3d 1297, 1305 (Fed. Cir. 2018) (“[N]on-source identifying nature of the words and the disclaimers thereof constitute rational reasons for giving those terms less weight in the analysis.”).

It is well settled that the addition of non-distinctive matter does not alter the commercial impression of the mark. *Id.* at 1304 (“[W]hile it is true that the words ‘Co.’ and ‘Club’ technically differentiate the marks [DETROIT ATHLETIC CO. and DETROIT ATHLETIC CLUB], those words do little to alleviate the confusion that is likely to ensue”); *In re Denisi*, 1985 TTAB LEXIS 107, at \*2-3 (“While not ignoring the caveat that marks [such as PERRY’S PIZZA and PERRY’S] must be considered in their entirety when evaluating the chances of their being confused in the marketplace, where a newcomer has appropriated the entire mark of a registrant, and has added to it a non-distinctive term, the marks are generally considered to be confusingly similar.”). As a final point of comparison, we note that Registrant’s mark MRS. CLAUS forms the whole or the first two words in Applicant’s marks. *See In re Detroit Athletic Co.*, 903 F3d at 1303 (“The identity of the marks’ initial two words is particularly significant because consumers typically notice those words first.”).

In sum, notwithstanding the differences in sight and sound caused by the addition of the disclaimed terms COOKIES and COOKIE COMPANY, the marks MRS.

CLAUS, MRS. CLAUS COOKIES, and MRS. CLAUS COOKIE COMPANY are identical and highly similar to the registered mark MRS. CLAUS.

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

**C. The relatedness of the goods and services, trade channels and classes of consumers, and purchasing conditions**

We consider *DuPont* factors two, three, and four regarding the similarity or dissimilarity of the parties' respective goods and services, their trade channels, and "[t]he conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361.

**1. Applicant's goods v. the registered goods**

Applicant seeks to register its mark for:

Arrangements of candy; Bakery goods and dessert items, namely, cakes, cookies, pastries, candies, and frozen confections for retail and wholesale distribution and consumption on or off the premises; Bread flavored with spices; Brownies; Candy; Candy canes; Candy containing alcoholic beverage content and flavor; Candy with caramel; Chocolate candies; Chocolate covered pretzels; Chocolate for confectionery and bread; Chocolates and chocolate-based ready to eat candies and snacks; Confectionery for decorating Christmas trees; Confectionery in the form of dessert mousses; Confectionery, namely, candy and chocolate; Cookies; Cookies with nuts; Cupcakes; Frozen confectionery; Frozen confectionery containing ice cream; Gift baskets containing candy; Gingerbread; Hollow chocolate forms filled with ganache; Scones; Vegan cookies, in International Class 30.

The registered mark lists "Yeast; Baking powders; Baking spices; Confectionery chips for baking," in International Class 30.

We find that the registered goods "Confectionery chips for baking" are broadly worded and encompass chocolate confectionery chips for baking. We also find that Applicant's goods "Chocolate for confectionery and bread" and "Confectionery,

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namely, candy and chocolate” are broadly worded and encompass chocolate for confectionary chips for baking. We find the goods in part legally identical. It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the recitation of goods within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

We also find the non-identical goods to be related. Applicant recognizes the inherent relationship between the registered ingredients for baking and its own baked goods, stating “some of Registrant’s goods are used in the production of some finished baked goods.”<sup>13</sup> The applications and registration themselves may provide evidence of the relationship between the goods. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, (Fed. Cir. 2002) (“On the face of the registrations themselves, QSC’s [amplifiers and power amplifiers] and the ACOUSTIC WAVE [loudspeaker systems and music systems consisting of a loudspeaker system and amplifier and at least one of a radio tuner, compact disc player and audio tape cassette player and loudspeaker systems] are related.”).

In addition, Applicant’s original identification of the International Class 30 goods in its use-based application included ingredients as well as the finished baked goods now listed. Specifically, Applicant’s application as filed stated that the marks MRS. CLAUS, MRS. CLAUS COOKIES, and MRS. CLAUS COOKIE COMPANY were in

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<sup>13</sup> 4 TTABVUE 15. Applicant also describes the registered goods as ““baking ingredients.” *Id.* Applicant vigorously argues that this is insufficient to show that the goods are related. *Id.*

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use with the same “Yeast; Baking powders; Baking spices; Confectionery chips for baking” with which the registered MRS. CLAUS marks are used. *See Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 941 (Fed. Cir. 1990) (“Indeed, that such goods might come from a single source is shown by OSI’s original application, which indicates OSI itself used the mark OCTOCOM for both modems and computer programs.”). The evidence that the registered goods are a component of Applicant’s goods, and that the registered goods and Applicant’s goods may emanate from a single source – like Applicant – is sufficient to demonstrate a relationship for the purposes of likelihood of confusion.

Where, as here, the goods are identical in part, we presume the channels of trade and classes of purchasers are the same. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F3d 1317, 1323 (Fed. Cir. 2014).

As to the conditions of purchase, “[p]urchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect.” *Palm Bay Imps.*, 396 F.3d at 1376. We agree with the Examining Attorney that the baking goods of Registrant and the baked goods of Applicant appeal to ordinary consumers.<sup>14</sup> While we can agree with Applicant’s general contention that consumers enjoy “almost limitless options” for purchasing baked goods, we cannot agree with Applicant’s unsupported contention that the need to exercise choice itself requires sophistication.<sup>15</sup>

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<sup>14</sup> 6 TTABVUE 12.

<sup>15</sup> 4 TTABVUE 20.

We find that the identity or similarity of the respective goods and channels of trade, and the conditions of sale weigh in favor of finding a likelihood of confusion with respect to Applicant's goods.

## **2. Applicant's services v. the registered goods**

Applicant seeks to register its mark for:

Education services, namely, providing live and on-line classes in the field of culinary arts; Educational services, namely, conducting live and on-line classes, seminars, workshops, and social and cultural events in the field of culinary arts, in International Class 41.

The registered mark lists "Yeast; Baking powders; Baking spices; Confectionery chips for baking" in International Class 30.

In contrast to our finding with respect to the Registrant's and Applicant's goods, we find the applications and registration are not evidence of a relationship between educational services in the field of culinary arts and Applicant's baking goods. While it is true that Applicant itself offers both chocolate confectionery chips for baking and educational services in the field of culinary arts under the same mark, this single piece of evidence is insufficient to demonstrate that the purchasing public will perceive the baking goods and culinary arts education services as related.

The Examining Attorney presents no evidence on this point, but merely makes the unsupported argument that "those partaking in the applicant's culinary education services are likely to believe the registrant's goods are those of the educational instructor when the goods are used in a particular class, or called for in



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a particular recipe they may be creating.”<sup>16</sup> This falls woefully short of demonstrating the necessary relationship between the goods and services. *See Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1244-45 (Fed. Cir. 2004) (reversing TTAB’s holding that contemporaneous use of RITZ for cooking and wine selection classes and RITZ for kitchen textiles is likely to cause confusion, because the relatedness of the respective goods and services was not supported by substantial evidence).

We find consumers who seek education in the culinary arts likely to exercise more care in the selection of the educational services than the ordinary consumer purchasing baking goods. *See In re Info. Builders Inc.*, 2020 TTAB LEXIS 20, at \*14 (“[I]n light of the inherent nature of the goods and services involved, some degree of purchasing care may be exercised by Applicant’s potential or actual consumers.”).

We find the *DuPont* factors relating to the similarity of the registered goods and Applicant’s services, trade channels, classes of consumers, and conditions of sale weigh against a finding of likelihood of confusion.

#### **D. Balancing the factors**

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. In sum, we find Applicant’s standard-character marks MRS. CLAUS, MRS. CLAUS COOKIES, and MRS. CLAUS COOKIE COMPANY have the same connotation and overall commercial impressions as the registered standard-character mark MRS. CLAUS. The strength of the registered mark has not been restricted by

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<sup>16</sup> 7 TTABVUE 9.

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record evidence of third party use or registration of the same or similar marks on the same or similar goods and services. With respect to Applicant's International Class 30 goods, we find the goods are in part identical and otherwise related, the trade channels and classes of consumers presumed to be the same for the identical goods, and there is no evidence of a heightened degree of care or sophistication. When we balance the *DuPont* factors, we conclude that Applicant's marks are likely to create confusion with the registered mark with respect to the International Class 30 goods.

In contrast, notwithstanding the heavy weight we give the similarity of the marks, and the unrestricted strength of the registered mark, the scant record fails to demonstrate that there is any relationship between the registered goods and Applicant's educational services or their channels of trade and classes of consumer. Further, we find there is a variance in the sophistication of consumers. When we balance the *DuPont* factors, we conclude that Applicant's marks are not likely to create confusion with the registered mark with respect to the International Class 41 services.

### **Decision**

The refusal to register Applicant's marks MRS. CLAUS (App. Serial No. 97550335), MRS. CLAUS COOKIES (App. Serial No. 97550357), and MRS. CLAUS COOKIE COMPANY (App. Serial No. 97550571) is affirmed with respect to the International Class 30 goods, and reversed with respect to the International Class 41 services.

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Application Serial Nos. 97550335, 97550357, and 97550571 go forward only as to the International Class 41 services.