ESTTA Tracking number: **ESTTA1488404**
Filing date: **01/07/2026**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ex Parte Appeal - Serial No.	97691670
Appellant	Joshua James Waldrop
Applied for mark	ULTIMA PRO WRESTLING UPW
Correspondence address	JOSHUA JAMES WALDROP 1519 E CHAPMAN AVE SPC 400 FULLERTON, CA 92831 UNITED STATES Primary email: redguerrilla@hotmail.com Secondary email(s): socalfranchize@aol.com 714-589-0607
Submission	To file a main brief - second or subsequent request
Attachments	Waldrop Filing Appeal.pdf(290299 bytes)
Filer's name	Joshua James Waldrop
Filer's email	redguerrilla@hotmail.com
Signature	/Joshua James Waldrop/
Date	01/07/2026

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

Joshua James Waldrop

Serial No.: 97691670

Mark: ULTIMA PRO WRESTLING

Class: 041

APPLICANT'S APPEAL BRIEF

Table of Contents

1. Introduction
2. Statement of Facts
3. Argument
   - A. Abandonment of the Cited Mark
   - B. DuPont Factors
4. Conclusion

TABLE OF AUTHORITIES

Statutes

- 15 U.S.C. § 1052(d) (Lanham Act § 2(d))
- 15 U.S.C. § 1127 (Lanham Act § 45)

Regulations and Rules

- 37 C.F.R. § 2.142

Cases

- *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003)
- *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990)
- *Silverman v. CBS Inc.*, 870 F.2d 40, 47 (2d Cir. 1989).
- *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973).
- *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993)
- *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015)
- *Palm Bay Imps., Inc. v. Veuve Clicquot*, 396 F.3d 1369, 1373 (Fed. Cir. 2005).
- *Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373 (Fed. Cir. 2015)
- *In re Guild Mortg. Co.*, 912 F.3d 1376, 1385 (Fed. Cir. 2019)

I. INTRODUCTION

Applicant Joshua James Waldrop respectfully submits this Appeal Brief pursuant to 37 C.F.R. § 2.142, appealing the refusal to register ULTIMA PRO WRESTLING under Section 2(d) of the Lanham Act based on an alleged likelihood of confusion. Sec. 15 U.S.C. § 1052(d).

Likelihood of confusion is a legal determination based on underlying factual findings, and not all *DuPont* factors are relevant or entitled to equal weight in every case. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

As demonstrated below, the refusal should be reversed because the cited mark has been abandoned through prolonged non-use, and independently, because the relevant *DuPont* factors weigh decisively against any likelihood of confusion.

II. STATEMENT OF FACTS

Applicant is the owner of the mark ULTIMA PRO WRESTLING**,** used in connection with professional wrestling events, programming, and related promotional services.

The mark ULTIMA LUCHA was registered under U.S. Registration No. 5215129 and was used exclusively in connection with episodic events of the television series *Lucha Underground*, broadcast on the El Rey Network.

The final episode of *Lucha Underground* aired on October 5, 2018. Since that date, there have been no further broadcasts, live events, merchandise offerings, or commercial uses of the ULTIMA LUCHA mark.

The business relationship between the El Rey Network and Mexican Lucha Libre organization AAA Worldwide, which enabled use of the mark, dissolved in 2018, leading to further distancing between the branding associated with ULTIMA LUCHA and any ongoing commercial endeavors. The last official broadcast associated with the Lucha Underground brand aired in 2018, after which the series was formally cancelled. The program, which previously had a strong association with AAA's lucha libre style of wrestling, ceased to be a relevant force in the market after the dissolution of this partnership. Since the final broadcast of Lucha Underground in 2018, the ULTIMA LUCHA brand has had no official use in the marketplace, leaving it abandoned in both television

and professional wrestling circles. There is no evidence of licensing, promotional activity, or concrete plans to resume use.

Year	Event	Notes
2015–2018	Use of ULTIMA LUCHA in TV series	Regular broadcasts and promotions
Oct 2018	Final episode aired	Last commercial use recorded
2019–2026	Non-use period	No licensing, promotional activity, or intent to resume

Since the end of Lucha Underground, the principal actors and key figures associated with the brand have transitioned to other professional wrestling platforms. Most notably, the primary talents from the Lucha Underground series, including several of the key figures who helped shape the ULTIMA LUCHA brand, have joined Major League Wrestling (MLW). In fact, MLW has actively promoted a match type known as Azteca Lucha, a new and innovative concept developed to celebrate the rich legacy of lucha libre without direct association with the ULTIMA LUCHA mark.

This shift to MLW and the emphasis on Azteca Lucha is a clear indicator of the dissolution of the brand identity associated with ULTIMA LUCHA. MLW, as a separate and distinct promotion, has established its own unique identity in the wrestling marketplace. The transition away from the ULTIMA LUCHA brand is a further demonstration that any potential confusion between ULTIMA LUCHA and ULTIMA PRO WRESTLING is not only unlikely but also unsupported by the current trajectory of both the performers and the market as a whole.

Since the registration of the ULTIMA PRO WRESTLING trademark, Applicant has worked diligently to develop and promote this brand in a manner distinct from any possible association with ULTIMA LUCHA. Applicant's branding efforts have focused on distinguishing its mark through a variety of programming, merchandise, and promotional materials that are separate and apart from the now-defunct Lucha Underground. Applicant has established an active and ongoing presence in the professional wrestling market, which has grown in popularity, particularly in the wake of the Lucha Underground series' cancellation and the rebranding of former Lucha Underground talents.

Additionally, Applicant has been actively promoting events under the ULTIMA PRO WRESTLING name and has not received any notable instances of consumer confusion between its mark and the ULTIMA LUCHA brand. This evidence of a well-established presence in the market further demonstrates that, due to significant differences in the two marks' use and the dissolution of the earlier mark's commercial activity as of 2018, there is no reasonable possibility of confusion among consumers in the marketplace.

III. ARGUMENT

A. Abandonment of the Cited Mark

Under Section 45 of the Lanham Act, a mark is abandoned when use has been discontinued with intent not to resume; non-use for three consecutive years is prima facie evidence. 15 U.S.C. § 1127.

More than three years of non-use have passed, with no intent to resume. Therefore, an unrelated mark for Ultima Lucha that has not been used since 2018 cannot serve as a basis for refusal.

III. ARGUMENT

A. The Cited Mark Has Been Abandoned Due to Prolonged Non-Use

Under Section 45 of the Lanham Act, a mark is abandoned when its use has been discontinued with intent not to resume, and non-use for three consecutive years constitutes prima facie evidence of abandonment. 15 U.S.C. § 1127.

Once a prima facie showing of abandonment is made, the burden shifts to the registrant to demonstrate use or intent to resume use. *Imperial Tobacco Ltd. v. Philip Morris Inc.*, 899 F.2d 1575, 1581 (Fed. Cir. 1990).

Here, the record establishes more than three consecutive years of non-use of the ULTIMA LUCHA mark, with no evidence of licensing, promotion, or concrete plans to resume use. Mere speculative or subjective intent is insufficient as a matter of law. *Silverman v. CBS Inc.*, 870 F.2d 40, 47 (2d Cir. 1989).

Although Registration No. 4,158,541 remains of record**,** a registration cannot survive abandonment of the underlying mark**.** *Imperial Tobacco*, 899 F.2d at 1581. An abandoned mark cannot serve as a basis for refusal under Section 2(d) of the Lanham Act.

B. The Relevant *DuPont* Factors Weigh Against Likelihood of Confusion

Even if the Board were to consider the cited mark active, the refusal must still be reversed because the relevant *DuPont* factors do not support a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973).

1. The Marks Differ in Overall Commercial Impression

Marks must be compared in their entireties, considering appearance, sound, meaning, and commercial impression. *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993).

Although both marks contain the term "ULTIMA," shared wording alone does not compel a finding of likelihood of confusion. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015).

Whereas ULTIMA LUCHA evokes a specific Spanish-language event title tied to a discontinued television series, ULTIMA PRO WRESTLING clearly identifies a professional wrestling promotion. The additional wording "PRO WRESTLING" materially alters the mark's meaning and commercial impression, making confusion unlikely.

2. The Cited Mark Is Weak and Entitled to a Narrow Scope of Protection

The strength of a mark is a critical factor in the likelihood of confusion analysis. *Palm Bay Imps., Inc. v. Veuve Clicquot*, 396 F.3d 1369, 1373 (Fed. Cir. 2005).

Any recognition associated with ULTIMA LUCHA was entirely dependent on a television program that ceased airing in 2018. A mark with limited or extinguished commercial strength is entitled to a narrow scope of protection. *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373 (Fed. Cir. 2015).

3. Absence of Actual Confusion

While not required, the absence of actual confusion over a meaningful period of concurrent use is probative and weighs against a likelihood of confusion finding. *In re Guild Mortg. Co.*, 912 F.3d 1376, 1385 (Fed. Cir. 2019).

Applicant is unaware of any instances of actual consumer confusion arising from use of the ULTIMA PRO WRESTLING mark. Given their clear differentiation and the ULTIMA LUCHA mark's disuse since 2018, there is no reasonable risk of customer confusion in the marketplace.

IV. CONCLUSION

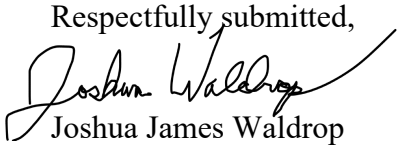
Given the disuse of the ULTIMA LUCHA trademark since 2018, the dissolution of key partnerships related to the ULTIMA LUCHA mark, and the shifting market focus toward other brands such as MLW and its Azteca Lucha programming, there is currently no viable argument for a likelihood of confusion between the marks ULTIMA PRO WRESTLING and ULTIMA LUCHA.

For the foregoing reasons, Applicant respectfully submits that:

1. The ULTIMA LUCHA mark has been abandoned and cannot serve as a basis for refusal; and
2. Even if considered active, the relevant *DuPont* factors establish that no likelihood of confusion exists.

Applicant therefore requests that the Trademark Trial and Appeal Board reverse the refusal and allow the application for ULTIMA PRO WRESTLING to proceed to registration.

Respectfully submitted,



Joshua James Waldrop

1519 E. Chapman Ave., Spc. 400, Fullerton, CA 92831

714-589-0607

redguerrilla@hotmail.com

Date: 1/7/2026