This Opinion is Not a Precedent of the TTAB

Mailed: November 21, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Bruhhl LLC

Serial No. 97741879

Bruhhl LLC, pro se.

Kelly Neal, Trademark Examining Attorney, Law Office 105,
Jennifer L. Williston, Managing Attorney.

Before Larkin, Lebow, and O'Connor,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Bruhhl LLC ("Applicant"), appearing pro se, seeks registration on the Principal Register of the standard-character mark SANITEE for "Spray sanitizer for personal use" in International Class 5.[1]

The Trademark 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 it

[1] Application Serial No. 97741879 was filed on January 4, 2023 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.

so resembles the standard-character mark SANITY, registered on the Principal Register for "Disinfectants, hand sanitizers" in International Class 5,[2] as to be likely, when used in connection with the goods identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal to register final, Applicant appealed and subsequently requested reconsideration, which was denied. The case is fully briefed.[3] We affirm the refusal to register.

I. Record on Appeal[4]

The record on appeal was made entirely by the Examining Attorney. It includes USPTO electronic records regarding the cited registration;[5] dictionary definitions of the words "sanity," "sanitizer," "hand sanitizer," "disinfectant," and "tee," and the suffix "-ty;"[6] a list of baby names ending with "y" and "ee;"[7] third-party webpages that the Examining Attorney claimed during prosecution "establish[ ] that the same entity commonly manufactures, produces, or provides the hand sanitizer and spray

[2] The cited Registration No. 6709296 issued on April 26, 2022.

[3] Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. 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 appeal brief appears at 6 TTABVUE and its reply brief appears at 9 TTABVUE. The Examining Attorney's brief appears at 8 TTABVUE.

[4] Citations in this opinion to the application record are to pages in the downloadable .pdf version of the Trademark Status & Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO").

[5] October 2, 2023 Office Action at TSDR 5.

[6] August 29, 2025 Denial of Request for Reconsideration at TSDR 8-15, 16-17, 193-208 (COLLINS DICTIONARY).

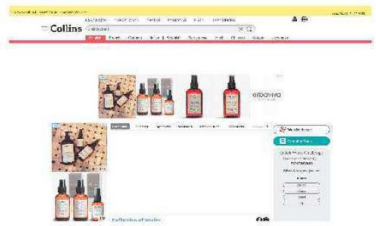
[7] *Id.* at TSDR 18-27 (babycenter.com).

sanitizer for personal use and markets these goods under the same mark" and "that the same entity commonly manufactures, produces, or provides the disinfectants and spray sanitizer for personal use and markets these goods under the same mark;"[8] and USPTO electronic records regarding third-party registrations of marks that the Examining Attorney claimed during prosecution are "registered for use in connection with the same or similar goods as those of both applicant and registrant in this case" and "show[ ] that the goods listed therein, namely disinfectants and hand sanitizer and spray sanitizer for personal use, are of a kind that may emanate from a single source under a single mark."[9]

II. Evidentiary Issue

Applicant attached to its appeal brief two appendices, which we reproduce below:

APPENDIX A



The above screenshot image is one of the attachments to USPTO Examining Attorney's letter dated 4-29-2025. Note that the labels exhibit a restrained design, lacking any features that could be construed as lighthearted or recreational in nature.

[8] *Id.* at TSDR 6, 28-192.

[9] *Id.* at TSDR 6, 209-50.

6 TTABVUE 4.

APPENDIX B

The above image is a photograph of Applicant's product, SANITEE. The labels display characteristics of vibrancy and demonstrate a lighthearted aesthetic. The product resonates with a youthful, fun-loving audience that enjoys a playful approach.

Id. at 5. In the body of its appeal brief, Applicant requests the Board to "[p]leaser [sic] contrast the images provided in APPENDIX A with APPENDIX B for further illustration of the differences in the names in contrast." *Id.* at 3.

The Examining Attorney argues that "Applicant improperly attempts to add new evidence outside the application records in 'Appendix A' and 'Appendix B' of the attachments to its brief," and "objects to the use and consideration of this evidence." 8 TTABVUE 2. The Examining Attorney acknowledges that "the evidence in 'Appendix A' is a screenshot the examining attorney provided as dictionary evidence

in a prior Office action," but argues that "the text at the bottom of the page was not originally part of the dictionary evidence." *Id.*[10]

In its reply brief, Applicant "acknowledges that certain exhibits were submitted after the appeal was initiated," but argues that "they were intended to clarify, not supplement, the evidentiary record." 9 TTABVUE 3. Applicant "maintains that the substance of its argument stands without reliance on those exhibits, and invites the Board to consider them only if permissible under discretion." *Id.*

"The record in the application should be complete prior to the filing of an appeal" and "[e]vidence should not be filed with the Board after the filing of a notice of appeal." *In re Weiss*, Ser. No. 88621608, 2024 WL 3617597, at *2 (TTAB 2024) (quoting Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)). If an applicant wishes to make additional evidence of record on appeal, the proper means is to request remand of the application to the examining attorney for consideration of the evidence. *Id.* (citing Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)).

The photograph in Appendix A was made of record during prosecution,[11] and we overrule the Examining Attorney's objection to Applicant's annotation to it, which is in the nature of argument,[12] but the photograph in Appendix B is not in the record

[10] The Examining Attorney also claims that Applicant "incorrectly states that the bottles advertised on the dictionary webpage are registrant's goods." 8 TTABVUE 4 (citing 6 TTABVUE 4). Applicant did not make such a statement in its annotation in Appendix A or in the body of its appeal brief, and the picture shows products sold under the mark ERBAVIVA, not the cited mark SANITY. April 29, 2025 Denial of Request for Reconsideration at TSDR 8.

[11] April 29, 2025 Denial of Request for Reconsideration at TSDR 8.

[12] The annotation to Appendix A is irrelevant even if Appendix A showed the cited mark because we cannot rely on extrinsic evidence of the actual use of either of the involved marks

and is thus "additional evidence," *id.*, as to which Applicant did not file a remand request. We sustain the Examining Attorney's objection to Appendix B in its entirety and have given it no consideration in our decision.

III. 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 characteristics of the goods and differences in the marks." *DC Comics v. Cellular Nerd LLC*, Opp. No. 91246950, 2022 WL 17832492, at *10 (TTAB 2022)

---

to determine their commercial impressions. *See*, *e.g.*, *In re Aquitaine Wine USA, LLC*, Serial No. 86928469, 2018 WL 1620989, at *4 (TTAB 2018) ("we do not consider how Applicant and Registrant actually use their marks in the marketplace, but rather how they appear in the registration and the application. We must compare the marks as they appear in the drawings, and not on any labels that may have additional wording or information.") (citations omitted).

(internal quotations and quotation marks omitted). In its appeal brief, Applicant focuses almost entirely on these two key factors, 6 TTABVUE 2-3,[13] and the Examining Attorney does so as well. 8 TTABVUE 3-8.

A. Similarity or Dissimilarity of the Goods

"The second *DuPont* factor considers '[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration . . . .'" *In re Detroit Athletic Co.*, 903 F.2d 1297, 1306 (Fed. Cir. 2018). "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.'" *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)). "In analyzing the [goods], the Board considers [t]he similarity or dissimilarity and nature of the [goods] as described in an application or registration." *In re OSF Healthcare Sys.*, Ser. No. 88706809, 2023 WL

[13] Applicant mentions trade channels twice in its appeal brief. 6 TTABVUE 2-3. The third *DuPont* factor considers "the similarity or dissimilarity of established, likely-to-continue trade channels," *DuPont*, 476 F.2d at 1361, but Applicant does not offer any developed argument or cite any evidence regarding trade channels. Applicant's reply brief contains headings captioned the "Weakness of the Cited Mark," and "No Evidence of Actual Confusion," 9 TTABVUE 3, which respectively implicate the sixth and eighth *DuPont* factors, *DuPont*, 476 F.2d at 1361, but we have given Applicant's unsupported arguments regarding these factors no consideration because they were made by Applicant for the first time in its reply brief, and the Examining Attorney thus had no opportunity to address them. *See Major League Baseball Players Ass'n v. Chisena*, Opp. No. 91240180, 2023 WL 2986321, at *26 (TTAB 2023) (argument under the thirteenth *DuPont* factor raised by opposers for the first time in their reply brief not considered), *appeal docketed*, No. 23-2073 (Fed. Cir. June 26, 2023); *cf. Instagram, LLC v. Instagoods Pty Ltd.*, Opp. No. 91266266, 2023 WL 6786567, at *7 (TTAB 2023) (refusing to consider argument made for the first time in reply brief on motion); *In re City of Hous.*, Ser. No. 77660948, 2012 WL 423805, at *2 (TTAB 2012) (refusing to consider evidence submitted by applicant with reply brief because examining attorney had no opportunity to respond to it).

6140427, at *4 (TTAB 2023) (quoting *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at *10 (TTAB 2021)).

> The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods . . . set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods . . ., the particular channels of trade or the class of purchasers to which the sales of goods . . . are directed.

Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC, Opp. No. 91270181, 2024 WL 1638376, at *7 (TTAB 2024) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)). The goods identified in the cited registration are "Disinfectants, hand sanitizers,"[14] while the goods identified in the application are "Spray sanitizer for personal use."

"The goods need not be identical or even competitive to find a likelihood of confusion." *In re Samsung Display Co.*, Ser. No. 90502617, 2024 WL 3451873, at *3 (TTAB 2024) (citing *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000)). "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] emanate from the same source.'" *Id.* (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, Opp. 91117739, 2007 WL 1431084, at *10 (TTAB 2007)).

[14] The Examining Attorney is not required to show that Applicant's goods are related to both of the goods identified in the cited registration. *See generally Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336 (CCPA 1981). We will focus on the "hand sanitizers" identified in the cited registration.

The relatedness of goods or services may be established based on (1) the language of the involved identifications of goods or services, which may show that the goods or services are literally or legally identical, or otherwise intrinsically related, and (2) extrinsic evidence, such as third-party uses or registrations, which may show that the goods or services are commonly offered by the same entity under the same mark. *See*, *e.g.*, *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at *2-6 (TTAB 2019).

With respect to intrinsic relatedness, we "must construe the ['hand sanitizers'] identified in the cited registration as broadly as reasonably possible 'to include all [goods] of the nature and type described therein,'" *OSF Healthcare*, 2023 WL 6140427, at *5 (quoting *In re Solid State Design Inc.*, Ser. No. 87269041, 2018 WL 287909, at *6 (TTAB 2018) (internal quotation omitted)), and we "must resolve any ambiguities regarding their coverage in favor of the cited registrant 'given the presumptions afforded the registration under Section 7(b)' of the Trademark Act." *Id.* (quoting *In re C.H. Hanson Co.*, Ser. No. 77983232, 2015 WL 6121759, at *5 (TTAB 2015) (citing 15 U.S.C. § 1057(b)). We must also "give the ['spray sanitizer for personal use'] identified in the application [its] full scope in our analysis of the second *DuPont* factor." *Id.* (citing *Country Oven*, 2019 WL 6170483, at *5).

Extrinsic evidence of relatedness "may include news articles or evidence from computer databases showing that the relevant goods . . . are used together or used by the same purchasers; advertisements showing that the relevant goods . . . are advertised together or sold by the same manufacturer or dealer; or copies of prior use-

based registrations of the same mark for both applicant's goods . . . and the goods . . . listed in the cited registration." *Embiid*, 2021 WL 2285576, at *10 (quoting *In re Ox Paperboard, LLC,* Ser. No. 87847482, 2020 WL 4530517, at *6 (TTAB 2020)).

In its appeal brief, Applicant argues that its

> goods are narrowly defined as a spray sanitizer for personal use, indicating a specific mode of delivery (mist or aerosol) and a targeted end-user. The cited mark's goods encompass a broader set of categories, including "disinfectants" (which may apply to surfaces or environments, not just personal hygiene) and "hand sanitizers" (which could take the form of gels, wipes, or foams, not exclusively sprays).

6 TTABVUE 3.

Applicant concludes that "[t]hese differences in product type, usage, and commercial trade channels mitigate any risk of consumer confusion." *Id.* Applicant cites *In re i.am.symbolic, LLC*, 866 F.3d 1315 (Fed. Cir. 2017), which Applicant argues "require[s] a fact-specific analysis of goods, not merely a broad categorical overlap." *Id.*

With respect to intrinsic relatedness, the Examining Attorney argues that "the application uses broad wording to describe 'spray sanitizer for personal use', which presumably encompasses all goods of the type described, including registrant's more narrow 'hand sanitizers' which are not limited to a specific form (i.e., liquid, gel, or spray)," and that "[b]oth marks are for sanitizers for use on a person." 8 TTABVUE 3 (citations omitted). The Examining Attorney further argues that Applicant conceded during prosecution that "both applicant and registrant are providing 'hand sanitizer' products and argued that '[o]ur hand sanitizer product services a different purpose

and target market than the disinfectants and hand sanitizers covered by the registered trademark'." *Id.* at 4.[15] The Examining Attorney concludes that "the registration is for two goods, one encompassed by applicant's broader goods, and the other, 'disinfectants', is highly related to applicant's 'spray sanitizer for personal use' as the respective goods serve the same intended purpose of removing germs." *Id.*

With respect to relatedness based on extrinsic evidence, the Examining Attorney points to third-party websites and registrations that the Examining Attorney argues show that "the same entity commonly provides and markets hand sanitizer as well as spray sanitizer for personal use under the same mark." *Id.* at 5.

In its reply brief, Applicant does not address the second *DuPont* factor or respond to the Examining Attorney's arguments regarding intrinsic relatedness or relatedness based on third-party uses and registrations.

Turning first to intrinsic relatedness, as Applicant acknowledged during prosecution, a "spray sanitizer for personal use" could be a "hand sanitizer," and the only limitation on the nature of such a "sanitizer for personal use" is its delivery via a spray.[16] There is no limitation on the method of delivery or application of the "hand sanitizers" identified in the cited registration, and "constru[ing] the ['hand

[15] The Examining Attorney cites Applicant's Request for Reconsideration, in which Applicant stated that "[o]ur hand sanitizer product serves a different purpose and target market than the disinfectants and hand sanitizers covered by the registered trademark SANITY." November 3, 2024 Request for Reconsideration at TSDR 4. The Examining Attorney also points to Applicant's products shown in Appendix B to Applicant's appeal brief, arguing that Appendix B shows "use of the applied-for mark with a bottle labeled as hand sanitizer," 8 TTABVUE 4, but as discussed above, we have sustained the Examining Attorney's objection to Appendix B, and we will not consider it.

[16] November 3, 2024 Request for Reconsideration at TSDR 4

sanitizers'] identified in the cited registration as broadly as reasonably possible to include all [goods] of the nature and type described therein," *OSF Healthcare*, 2023 WL 6140427, at *5 (quotation and quotation marks omitted), and "resolv[ing] any ambiguities regarding their coverage in favor of the cited registrant given the presumptions afforded the registration under Section 7(b) of the Trademark Act," *id.* (quotation and quotation marks omitted), we find that "hand sanitizers" could take the form of a spray product.[17] Accordingly, we agree with the Examining Attorney that the goods identified in the cited registration as "hand sanitizers" and the goods identified in the application as "spray sanitizer for personal use" are legally identical because "spray sanitizer for personal use" encompasses "hand sanitizers."[18]

[17] Applicant states in its appeal brief that those goods "could take the form of gels, wipes, or foams, not exclusively sprays," 6 TTABVUE 3, thus acknowledging that "hand sanitizers" could take the form of a spray. The record contains numerous examples of spray hand sanitizers sold by third parties. April 29, 2025 Denial of Request for Reconsideration at TSDR 47, 53 (PlaneAire); 62, 65-66, 75 (dōTERRA); 77 (Common Sense); 106-07 (Honest); 113, 117 (Bath & Body Works); 120-21 (Boogie); 127 (Merci Handy); 129-30 (EO); 133, 139, 144 (Grove Co.); 153 (Molly's Suds); 177 (Trader Joe's); 180-81 (Naturacentric); 187-88 (PureBioGuard).

[18] As noted above, Applicant mentions trade channels only in passing in its appeal brief, and the Examining Attorney also mentions trade channels and classes of consumers only in passing in connection with a discussion of the second *DuPont* factor. 8 TTABVUE 4, 8. Where, as here, the involved goods are identical, "'absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.'" *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (quoting *Hewlett-Packard*, 281 F.3d at 1268 (internal citation omitted)). "Because there are no restrictions in the identifications of the cited registration and involved application, we must presume that these . . . legally identical goods travel through the same channels of trade to the same potential purchasers." *In re Ye Mystic Krewe of Gasparilla*, Ser. No. 90522364, 2025 WL 2953731, at *4 (TTAB 2025) (citing *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018)). We may "rely on this legal presumption in determining likelihood of confusion," *Viterra*, 671 F.3d at 1362, in the absence of record evidence. The third *DuPont* factor thus strongly supports a conclusion that confusion is likely.

The record also shows that the identified goods (or equivalents) are commonly sold by the same entity under the same mark. The Examining Attorney made of record multiple third-party webpages offering the involved goods or equivalents.

> With respect to Internet evidence, in determining exactly what [goods] are offered through the respective websites, we acknowledge that [goods] may not be explicitly described at all, or 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, 2023 WL 6140427, at *10 (citations omitted). "In such instances, we must determine the nature of the [goods] that are offered, and decide whether they fall within the full scope of the language in the involved identifications." *Id.* (citing *In re Dare Foods, Inc.*, Ser. No. 88758625, 2022 WL 970319, at *3 (TTAB 2022) (construing smoked salmon, shellfish, and caviar cream spread displayed on a website as "falling within the ambit of Applicant's 'snack food dips'.")).

The record shows that Purell offers an "Advanced Hand Sanitizer Energizing Mist," "Hand Sanitizer Sprays," and other hand sanitizers,[19] and PlaneAire, Common Sense, Honest, Bath & Body Works, Boogie, EO, Grove, Molly's Suds, Trader Joe's, Naturacentric, and PureBioGuard all offer various hand sanitizer sprays, typically described as "Hand Sanitizer Spray" or "Hand Sanitizing Spray," and often other forms of hand sanitizers.[20] As described, these goods are all encompassed within both

[19] April 29, 2025 Denial of Request for Reconsideration at TSDR 43-44.

[20] *Id.* at TSDR 47, 53, 77-78, 106-07, 113, 117, 120-21, 129-30, 133-34, 153-54, 177, 180-81, 187-88.

the "spray sanitizer for personal use" identified in the application and the "hand sanitizers" identified in the cited registration.

In addition, dōTERRA offers a "Hand Sanitizing Mist;"[21] Wet Ones offers "Hydrating Hand Sanitizer Mist;"[22] Merci Handy offers "Purifying Sanitizer Spray;"[23] and Latalia offers "Sanitizing Spray" and "Hand Sanitizer."[24] As described, these goods could also all be encompassed within both the "spray sanitizer for personal use" identified in the application and the "hand sanitizers" identified in the cited registration. This third-party use evidence "bolsters our finding of relatedness" based on the intrinsic relatedness of the goods. *Country Oven*, 2019 WL 6170483, at *6.

The Examining Attorney also made of record multiple use-based third-party registrations covering "spray sanitizer for personal use" and goods broadly identified as "handsanitizing preparations," which encompass "hand sanitizers."[25] "As a general proposition, third-party registrations that cover goods . . . from both the cited registration and an Applicant's application are relevant to show that the goods . . . are of a type that may emanate from a single source under one mark." *Id.* at *6.

The relevant third-party registrations are Registration Nos. 7170038; 6390544; 6200507; 6165584; 6184766; 6433413; 6332302; 6202551; 6457174; 6294996;

[21] *Id.* at TSDR 65-66.

[22] *Id.* at TSDR 103.

[23] *Id.* at TSDR 125.

[24] *Id.* at TSDR 86-87.

[25] "Just as we must consider the full scope of the goods and services as set forth in the application and registration under consideration, we must consider the full scope of the goods and services described in a third-party registration." *Country Oven*, 2019 WL 6170483, at *5.

6381623; 6238686; 6969547; 6630048; and 6169364.[26] These 15 third-party registrations, owned by 13 different registrants, "are sufficient in both quality and quantity to provide a reasonable predicate supporting the Examining Attorney's position on relatedness and shift the burden to Applicant to rebut the evidence with competent evidence of its own." *Country Oven*, 2019 WL 6170483, at *5. Applicant offered no countervailing evidence showing that the goods are not related. "The third-party registrations thus show that ['spray sanitizer for personal use' and 'hand sanitizers'] are types of goods . . . that emanate from a common source under the same mark and, thus, are probative evidence that the goods . . . are related, bolstering our finding of relatedness." *Id.*

The "hand sanitizers" identified in the cited registration and the "spray sanitizer for personal use" identified in the application are legally identical, and the record also shows that those goods or equivalents are commonly sold by the same entity under the same mark. The second *DuPont* factor strongly supports a conclusion that confusion is likely.

B. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, "we consider the 'similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.'" *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *4 (quoting *DuPont*, 476 F.2d at 1361). "Similarity in any one of these elements may be

[26] April 29, 2025 Denial of Request for Reconsideration at TSDR 209-10, 211-12, 213-14, 219-20, 223-24, 225-26, 227-28, 229-30, 231-32, 233-34, 237-38, 239-40, 243-44, 245-46, 249-50.

sufficient to find the marks confusingly similar." *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *In re Inn at St. John's LLC*, Ser. No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (citation omitted), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation 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." *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *Coach Servs.*, 668 F.3d at 1368). "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, at *4 (TTAB 2018) (citations omitted)). The average purchaser here is a consumer of "spray sanitizer for personal use," which by definition includes members of the general public.

We must "keep in mind that where, as here, the goods are [legally] identical in part, 'the degree of similarity necessary to support a conclusion of likely confusion declines.'" *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *4 (quoting *Viterra*, 671 F.3d at 1363 (citation omitted)).

The marks here are SANITEE and SANITY, both in standard characters. Applicant acknowledges that "the marks share an initial phonetic similarity," but

claims that "their overall commercial impressions diverge significantly in sight, sound, connotation, and market context, negating any substantial likelihood of consumer confusion." 6 TTABVUE 2. Applicant argues that

> Although both marks begin with the syllable "SAN-", their structural and phonetic differences are material. The registered trademark SANITY concludes with the suffix "-ITY", which conveys an abstract concept (e.g., mental soundness or hygiene). In contrast, SANITEE employs the suffix "-TEE", introducing a distinct visual and auditory element that alters the mark's cadence and connotation. The "-TEE" ending may evoke associations with casual or playful goods (e.g., "tee" as in a T-shirt, or in various sports such as tee ball, or as in a golf tee), distinguishing it from the more clinical or abstract impression of SANITY. This distinction is not merely superficial – it fundamentally changes the rhythm, sound, and implied meaning of the mark. Courts and the TTAB have consistently held that differences in suffix formations can preclude confusion, even where initial syllables overlap.

Id. (citing *DuPont*, 476 F.2d at 1361).

The Examining Attorney responds that the marks "are essentially phonetic equivalent and substantially similar in appearance and meaning." 8 TTABVUE 7. The Examining Attorney argues that "the ending of the wording in registrant's mark, '-TY' is pronounced as 'ti' and . . . the ending of the wording in applicant's mark, '-TEE', is pronounced as 'ti'," and that "the marks are in standard characters and start with the identical first letters SANIT- followed by a phonetically similar ending -EE or -Y," concluding that "the compared marks could clearly be pronounced the same." *Id.*

The Examining Attorney further argues that

> the visual difference in the endings of the marks do not alter the marks' overall commercial impressions, as argued

> by applicant. Here, both marks would be pronounced as "sænɪti" or "sanity" which invokes soundness of one's mind or judgment. . . . Consequently, the marks convey the same idea or meaning, i.e., products for helping a person remain sane by ensuring hands/surfaces are free from germs.

Id. (citations omitted).

In its reply brief, Applicant argues that

> The word "sanity" is a common English word meaning "soundness of mind" and is strongly associated with mental health, not sanitation. Applicant's "Sanitee" is a coined, stylized term (not a dictionary word) that evokes sanitation, hygiene, or cleanliness – a completely different commercial impression. Consumers are unlikely to associate a mental health-related term (SANITY) with a hygiene product (SANITEE). Applicant contends distinction based on disparate meanings of the words as spelled.

9 TTABVUE 2.

Applicant further argues in its reply brief that

> The -EE ending of Applicant's mark SANITEE makes it visually and phonetically distinct from the -Y ending of the registered mark SANITY. The two marks are clearly distinct visually due to the different endings. Additionally, the -EE ending naturally shifts the pronounced emphasis to the final syllable (san-ih-TEE) rather than the primary stress being on the first syllable as when pronouncing the word "sanity" (SAN-ih-tee). This difference, coupled with the distinctive spelling of SANITEE, reinforces that the marks are not likely to be confused in sight or sound.

Id. at 2-3.

Before we discuss our analysis under the first *DuPont* factor, we must note two troubling citations in Applicant's reply brief regarding that factor. Applicant cites "In re *Bay Brewing Co.* (TTAB 1998)" for the proposition that "differences in meaning between marks can outweigh similarities in sound," 9 TTABVUE 2, and "In re *Viterra*

Inc. (Fed. Cir. 2009)," for the proposition that "small spelling differences can be enough to avoid confusion if the meanings differ." 9 TTABVUE 3.

Applicant does not provide a reporter citation for "In re *Bay Brewing Co.* (TTAB 1998)," and we could not locate any such case in any legal database or in TTABVUE. In the absence of any other plausible explanation, we can only conclude that the cited "In re *Bay Brewing Co.* (TTAB 1998)" case was "hallucinated" by generative artificial intelligence. Parties appearing before the Board are free to use AI in preparing their filings, but they obviously cannot use it to create cases that do not actually exist. *See generally* "Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office," 89 Fed. Reg. 25609 (Apr. 11, 2024) (parties using AI to draft papers must confirm the accuracy of all facts and citations to case law).

Applicant also does not provide a reporter citation for "In re *Viterra Inc.* (Fed. Cir. 2009)," but as noted above, there is a *Viterra* decision by the Federal Circuit that issued in 2012. That decision did not hold, however, that "small spelling differences can be enough to avoid confusion if the meanings differ," as Applicant claims, 9 TTABVUE 3; instead, as discussed immediately below, it effectively reached the opposite conclusion in holding that the Board had properly found that the involved marks were confusingly similar notwithstanding "small spelling differences" and claimed differences in their pronunciations and meanings.

In *Viterra*, the Federal Circuit upheld the Board's decision affirming a refusal to register the standard-character mark XCEED for agricultural seed over a

registration of X-SEED and design for the same goods. The court upheld the Board's finding rejecting the applicant's argument that "XCEED and X–Seed are not phonetic equivalents because XCEED will be pronounced 'exceed' with an emphasis on the second syllable (i.e., ikSEED), whereas X–Seed will be pronounced with an emphasis on the first syllable (i.e., EKS-seed)," and the Board's finding that "'it is hard to imagine that the two marks will not sound alike when spoken.'" *Viterra*, 671 F.3d at 1367 (record citation omitted). The court also held that "substantial evidence supports the Board's determination that any minor differences in the sound of these marks may go undetected by consumers and, therefore, would not be sufficient to distinguish the marks." *Id.* Finally, the court noted that the applicant "contend[ed] that the marks have different connotations because its XCEED mark will be construed by customers as 'exceeding' their expectations, whereas the X–Seed Mark is subject to a variety of meanings, including the roman numeral for ten, an unknown quantity, or an abbreviation for 'cross,'" *id.*, but the court upheld the Board's finding that "it is reasonable that purchasers will perceive registrant's mark in a similar manner, that is, purchasers may give the same meaning of superiority to registrant's mark.'" *Id.* (record citation omitted).

The most plausible explanation of Applicant's miscitation of the *Viterra* decision is again that AI was used and caused Applicant to advance an argument that is not only unsupported by *Viterra*, but directly undercut by it. Applicant's miscitation of *Viterra* is no less troubling, however, if Applicant did not use AI, but simply misrepresented the holding and analysis in the case. Parties appearing before the

Board have a duty to review and verify the contents of each filing presented to the Board, and those appearing pro se are no exception. *See*, *e.g.*, *Hole in 1 Drinks, Inc. v. Lajtay*, Canc. No. 92065860, 2020 WL 859853, at *1 (TTAB 2020). Applicant breached that duty in citing "In re *Bay Brewing Co.*" and *Viterra* in its reply brief.

Turning now to the issue of the similarity or dissimilarity of the involved marks, Applicant concedes that SANITY and SANITEE "share an initial phonetic similarity," 6 TTABVUE 2, and that "phonetic similarities exist." 9 TTABVUE 2. Applicant also acknowledges that "[t]he word 'sanity' is a common English word meaning 'soundness of mind'," *id.*, and, as such, it has an understood pronunciation. *Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, Canc. No. 92079409, 2024 WL 3739358, at *10 (TTAB 2024) ("Petitioner's mark contains the word LOOK which has a known pronunciation."). Dictionary evidence in the record shows that the suffixes -TY and -TEE are phonetic equivalents in American English,[27] and there is no evidence supporting Applicant's argument in its reply brief that "the -EE ending naturally shifts the pronounced emphasis to the final syllable (san-ih-TEE) rather than the primary stress being on the first syllable as when pronouncing the word 'sanity' (SAN-ih-tee)." 9 TTABVUE 2.[28] *See Cai*, 901 F.3d at 1371 (assertions in brief are "not evidence under any of the relevant rules . . . .").

[27] April 29, 2025 Denial of Request for Reconsideration at TSDR 9-17 (COLLINS DICTIONARY).

[28] This argument looks similar to the applicant's unsuccessful argument in *Viterra* that "XCEED and X–Seed are not phonetic equivalents because XCEED will be pronounced 'exceed' with an emphasis on the second syllable (i.e., ikSEED), whereas X–Seed will be pronounced with an emphasis on the first syllable (i.e., EKS-seed)." *Viterra*, 671 F.3d at 1367 (record citation omitted). In *Viterra*, the applicant at least "presented dictionary evidence to

We agree with Applicant that its SANITEE "mark is a made-up word and has no established pronunciation," but "we must consider all reasonable possibilities" for its pronunciation. *Look Cycle*, 2024 WL 3739358, at *10 (citing *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332 (Fed. Cir. 2014)). It is at least a "reasonable possibility" that the SANITEE mark "can be pronounced in a manner that rhymes with" the cited SANITY mark. *Id.* (finding that a "significant segment of consumers will pronounce Respondent's [BLOOKE] mark as rhyming with Petitioner's [LOOK] mark," and that the fact that "the marks rhyme . . . presents a similarity in sound.").

As with the X-Seed and design and XCEED marks in *Viterra*, "it is hard to imagine that the two marks [SANITY and SANITEE] will not sound alike when spoken." *Viterra*, 671 F.3d at 1371 (internal quotation and quotation marks omitted.). We find that the marks are very similar phonetically, if not identical.

We agree with Applicant that there are minor differences in appearance between the suffixes in the SANITY and SANITEE marks that may be noticed when the marks are viewed together, "[b]ut marks 'must be considered . . . in light of the fallibility of memory' and 'not on the basis of side-by-side comparison.'" *St. Helena Hosp.*, 774 F.3d at 751 (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 685 (CCPA1977)). There is again "nothing in the record to persuade us that

---

the Board to support its contentions," *id.*, while here Applicant presented no supporting evidence on this or any other point.

any of the differences argued by [Applicant] meaningfully distinguish the appearance of the respective marks." *Id.*

Finally, with respect to connotation and commercial impression, there is no record evidence to support Applicant's argument that its SANITEE mark "may evoke associations with casual or playful goods (e.g., 'tee' as in a T-shirt, or in various sports such as tee ball, or as in a golf tee), distinguishing it from the more clinical or abstract impression of SANITY." 6 TTABVUE 2. Applicant's alternative argument that its SANITEE mark "evokes sanitation, hygiene, or cleanliness – a completely different commercial impression" from the mental-health connotation of SANITY, 9 TTABVUE 2, assumes a level of subtlety of consumer perception and retention that is inconsistent with our working assumption, in the absence of contrary evidence, that the average consumer "retains a general rather than specific impression of the marks," *Embiid*, 2021 WL 2285576, at *4 (citation omitted), and the need to compare the marks "in light of the fallibility of memory and not on the basis of side-by-side comparison." *St. Helena Hosp.*, 774 F.3d at 751 (quotation and quotation marks omitted). Applicant points to no record evidence supporting this alternative claimed meaning of the SANITEE mark, and even if it exists, consumers who separately encounter the phonetically- and visually-similar SANITY and SANITEE marks are unlikely to appreciate the subtle differences in meaning urged by Applicant.

"Similarity is not a binary factor but is a matter of degree." *Id.* (quoting *In re Coors Brewing Co.*, 343 F.3d 1340 1344 (Fed. Cir. 2003)). There are minor differences in appearance and possibly in meaning, but they are outweighed by the strong phonetic

similarity of the marks. We find that the first *DuPont* factor supports a conclusion that confusion is likely.

C. Summary

The key first and second *DuPont* factors, and the third factor, support a conclusion that confusion is likely, with the second and third factors strongly supporting that conclusion. The goods and channels of trade are legally identical, and when the marks are applied to the legally-identical goods sold through the same channels of trade to the same purchasers, consumers familiar with the cited SANITY mark who separately encounter Applicant's SANITEE mark are likely to believe mistakenly that the goods have a common source.

Decision: The refusal to register is affirmed.