

This Opinion is Not a  
Precedent of the TTAB

Mailed: January 24, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re The Spearhead Group, Inc.*  
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Serial No. 97891908  
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Marisa A. Roberts of Roberts & Roberts LLP for The Spearhead Group, Inc.

Teague Avent, Trademark Examining Attorney, Law Office 125,  
Robin Mittler, Managing Attorney.

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Before Kuhlke, Heasley, and Larkin,  
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

The Spearhead Group, Inc. (“Applicant”) seeks registration on the Principal Register of the mark shown below



for “Educational services, namely, providing incentives to students to demonstrate excellence in the field of marketing and product packaging design through the issuance of awards; Providing recognition and incentives by the way of awards and

contests to demonstrate excellence in the field of marketing and product packaging design” in International Class 41.<sup>1</sup>

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 Applicant’s mark so resembles the mark shown below



registered on the Principal Register for “Providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena” in International Class 35,<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.

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<sup>1</sup> Application Serial No. 97891908 was filed on April 17, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use of the mark anywhere and first use of the mark in commerce at least as early as May 31, 2019. Applicant describes its mark as follows: “The mark consists of [t]he phrase PBE AWARDS, wherein PBE is located above the word AWARDS, with PBE being enclosed in a circle and having a horizontal bar above the letters PBE within the circle, and wherein the ‘A’ of AWARDS is shown as an upward pointing arrow with a horizontal bar at the bottom, which horizontal bar forms a bottom of the circle.” Color is not claimed as a feature of the mark. Applicant has disclaimed the exclusive right to use AWARDS apart from the mark as shown.

<sup>2</sup> The cited Registration No. 6006288 issued on March 10, 2020. The registrant describes its mark as follows: “The mark consists of the stylized pink letters ‘PBE’ where a white horizontal rectangle is positioned in the middle of the letters and contains the gray stylized wording ‘PROJECT BEAUTY EXPO.’” The colors pink, white, and gray are claimed as features of the mark. The registrant has disclaimed the exclusive right to use PROJECT BEAUTY EXPO apart from the mark as shown.

Applicant appealed when the Examining Attorney made the refusal final. Applicant and the Examining Attorney have filed briefs.<sup>3</sup> We reverse the refusal to register.<sup>4</sup>

### **I. Record on Appeal<sup>5</sup>**

The record on appeal includes Applicant's specimen of use, which we reproduce in part below:

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<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 4 TTABVUE and the Examining Attorney's brief appears at 6 TTABVUE.

<sup>4</sup> As part of an internal Board pilot citation program, 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 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).



The record also includes USPTO electronic records regarding the cited registration,<sup>7</sup> and third-party webpages that the Examining Attorney described as “showing the same businesses providing awards for marketing and a forum.”<sup>8</sup>

## II. Evidentiary Issues

Before turning to the merits of the appeal, we must address some evidentiary issues. Applicant’s brief contains a live hyperlink to what Applicant describes as “an example of the Applicant’s services in use, wherein students compete in a product packaging design contest.”<sup>4</sup> TTABVUE 11. Applicant’s brief also lists what Applicant

<sup>6</sup> April 17, 2023 Application at TSDR 9.

<sup>7</sup> January 23, 2024 Office Action at TSDR 6-7.

<sup>8</sup> *Id.* at TSDR 3, 8-34; April 9, 2024 Final Office Action at TSDR 4, 6-28.

describes as “registrations which are owned by different entities and contain the term PBE . . . .” *Id.* at 13.

The Examining Attorney objects to these materials on the grounds that “Applicant’s submission of these materials was untimely, and did not conform with the requirements for making such materials part of the evidentiary record.” 6 TTABVue 3. The Examining Attorney argues that the “Board will not utilize a link or reference to a website’s Internet address to consider content that may appear there,” *id.* (quotation omitted), and that Applicant “did not submit copies of those registrations prior to initiating this appeal.” *Id.* The Examining Attorney requests that the Board disregard both the hyperlink and the list of registrations. *Id.* at 3-4.

As the Board has explained time and time again, (1) “providing hyperlinks to internet materials is insufficient to make such materials of record,” *In re Weiss*, Ser. No. 88621608, 2024 WL 3617597, at \*2 (TTAB 2024) (citations omitted), (2) “a list of registrations does not make those registrations of record,” *In re Peace Love World Live, LLC*, Ser. No. 86705287, 2018 WL 3570240, at \*6 n.17 (TTAB 2018) (citations omitted), (3) “[t]he record in the application should be complete prior to the filing of an appeal,” *Weiss*, 2024 WL 3617597, at \*2 (quoting Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)), and (4) “[e]vidence should not be filed with the Board after the filing of a notice of appeal.” *Id.* (quoting Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)). We sustain the Examining Attorney’s objection to the hyperlink and the list of registrations, and will not consider those materials, and any arguments based on them, in our decision.

### III. 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).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the [goods or] services.” *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 WL 417620, at \*6 (TTAB 2023) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)), *civ. action filed*, No. 5:23-cv-00549-GW-PVC (C.D. Cal. Mar. 28, 2023).

Applicant argues that confusion is unlikely because of “(a) the sufficiently different overall commercial impressions created by Applicant’s Mark versus the cited registration, (b) the differences in services between Applicant’s Mark and the cited registration[ ], and (c) the coexistence of multiple marks containing ‘PBE’, demonstrating that consumers can distinguish between such marks in the marketplace.” 4 TTABVUE 4. Applicant’s arguments invoke the key first two *DuPont*

factors, as well as the sixth *DuPont* factor, the “number and nature of similar marks in use on similar goods [or services].” *DuPont*, 476 F.2d at 1361.<sup>9</sup> Applicant’s arguments under the second *DuPont* factor, 4 TTABVUE 12-13, also allude to the fourth *DuPont* factor, the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing,” *DuPont*, 476 F.2d at 1361, without specifically mentioning that factor.

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

“Under the first *DuPont* factor, we consider ‘[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.’” *Iron Balls Int’l Ltd. v. Bull Creek Brewing, LLC*, Canc. No. 92079099, 2024 WL 2844425, at \*11 (TTAB 2024) (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

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<sup>9</sup> Applicant’s discussion of the sixth *DuPont* factor is based entirely on the list of third-party registrations in its brief that we have declined to consider in response to the Examining Attorney’s objection. 4 TTABVUE 13-14. Because Applicant did not properly submit any evidence supporting its argument under the sixth factor, we need not consider it further. *Cf. Heil Co. v. Tripleye GmbH*, Opp. No. 91277359, 2024 WL 4925901, at \*37 (TTAB 2024) (holding that the Board did not need to consider four *DuPont* factors where the parties presented no evidence regarding them).

between the parties.” *Sage Therapeutics*, 2024 WL 1638376, at \*5 (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, at \*4 (TTAB 2018)). On the basis of the identifications of services in the application, the average “purchasers” here appear to be students in the field of marketing and product packaging design who enter contests seeking awards and recognition for excellence in those fields.<sup>10</sup>

We reproduce the involved marks again below for ease of reference in following our discussion:



Applicant argues that its mark and the cited mark “contain very different styling.”

4 TTABVUE 7. According to Applicant, its mark

appears in bold black letters and incorporates the “A” of AWARDS. As an aside, this stylized “A” is also a signature symbol of many other U.S. trademark registrations owned by the Applicant (See US TM Reg. Nos. 5,758,878; 6,095,989). Importantly, it is noted that the “PBE in a circle” portion of this mark has been previously used for

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<sup>10</sup> Applicant’s specimen states that Applicant’s objective in providing the identified services is “supporting design and engineering schools . . . .” April 17, 2023 Application at TSDR 9.



over five years by the Applicant in another registered mark, US TM Reg. No. 5,758,879 for PBE PHYSICAL BRAND ENHANCEMENT. This known and used “PBE in a circle” portion of the design has gained consumer recognition for a multitude of the Applicant’s services

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

Applicant argues that the cited registered mark “appears in light pink and grey, which are claimed colors of their mark, with the words ‘PROJECT BEAUTY EXPO’ placed in front of the letters PBE . . . .” *Id.*<sup>12</sup> Applicant further argues that its mark contains only two words, while the cited mark “includes four separate words,” *id.* at 8, and that the Examining Attorney “is impermissibly splitting the marks by considering only the word ‘PBE’ in the above marks.” *Id.*<sup>13</sup>

The Examining Attorney responds that the “applied-for mark PBE AWARDS is similar to the registered mark PBE PROJECT BEAUTY EXPO because they both

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<sup>11</sup> In *In re Strategic Partners, Inc.*, Ser. No. 77903451, 2012 WL 1267930 (TTAB 2012), the Board held that where an applicant owns a registration that is at least five years old of a mark “that is substantially similar to the applied-for mark,” *id.* at \*3, and covers the same goods as those in the application on appeal, *id.*, that “unusual situation” may “tip the scale in favor of applicant and a finding of no likelihood of confusion” based on the thirteenth *DuPont* factor. *Id.* Those circumstances are not present here, where Applicant did not make either of its claimed registrations of record, so we give Applicant’s “aside” regarding the significance of its other registrations no further consideration.

<sup>12</sup> There is no color claim in the application, and we thus must assume that the applied-for mark could be used in any colors, including those claimed in the cited registration. *See In re Data Packaging Corp.*, 453 F.2d 1300, 1302 (CCPA 1972).

<sup>13</sup> Applicant “acknowledges that both the applied-for mark as well as the [cited] mark contain the term ‘PBE,’” *id.*, but argues that the existence of “a **multitude** of U.S. trademark registrations which include ‘PBE’, seven of which maintain LIVE status at the time of this submission, and one of those being the above-mentioned registration for ‘PBE PHYSICAL BRAND ENHANCEMENT,’ which is owned by the Applicant (US TM Reg. No. 5,578,879)” . . . demonstrate[s] this **coexistence without confusion** in the marketplace. 4 TTABVue 8-9 (emphasis in bold here in italics in Applicant’s brief). As discussed above, Applicant did not properly make of record any of the referenced registrations, so we give these arguments no further consideration.

begin with the identical lettering PBE,” 6 TTABVUE 6, and “the shared lettering PBE is also the dominant portion of the applied-for mark because the term AWARDS merely describes the applicant’s services and has been disclaimed.” *Id.* at 7. The Examining Attorney acknowledges that Applicant’s mark “differs from the registered mark in that it substitutes the word AWARDS for the wording PROJECT BEAUTY, however this substitution fails to significantly distinguish the marks.” *Id.* at 6.

The Examining Attorney further argues that the “shared lettering PBE is also the dominant portion of the registered mark because the wording PROJECT BEAUTY EXPO merely describes the registrant’s services and has been disclaimed,” *id.* at 7, and “because of its relatively large size.” *Id.* at 8.

The Examining Attorney concludes that “the dominant wording in the applied-for mark and registered marks is identical, and the marks as a whole are highly similar in overall commercial impression; therefore, this factor weighs in favor of a finding of a likelihood of confusion.” *Id.* at 10.

The marks must be considered 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)). As discussed above, the Examining Attorney argues that the initialism PBE dominates both marks. We disagree that PBE is the dominant portion of the cited mark.

In the registration of the cited mark, the words PROJECT BEAUTY EXPO have been disclaimed, but they are nonetheless the portion of the mark that is most likely to be noticed and remembered, and used by consumers in connection with the involved services. The words PROJECT BEAUTY EXPO appear in block capital letters in the center of the mark at its focal point. They bisect and partially obscure the background letters “P,” “B,” and “E,” and make it clear that those letters are an initialism for the words “PROJECT BEAUTY EXPO.” We find that a consumer with a general rather than specific impression of the cited mark is just as likely, if not more likely, to remember the words PROJECT BEAUTY EXPO than just the background letters PBE alone. Accordingly, in the required comparison of the marks in their entireties, we will give as much weight to the words PROJECT BEAUTY EXPO as to their abbreviation PBE.

With respect to appearance, the marks share the letters PBE, but otherwise bear little or no resemblance to one another, even assuming that Applicant’s mark is depicted in the pink, white, and gray colors shown and claimed in the cited registration. The literal element PBE AWARDS in Applicant’s mark appears against the backdrop of a circle design, while the literal elements PROJECT BEAUTY EXPO and PBE in the cited mark form a rectangle. The literal element PBE AWARDS in Applicant’s mark appears in a stacked presentation in uniform large capital letters, while in the cited mark, the literal element PROJECT BEAUTY EXPO appears on top of the literal element PBE, and the two elements are displayed in significantly different sizes. We find that a consumer with a general impression of the cited mark

who separately encounters Applicant's mark would be likely to notice the visual differences between the marks even though both contain the letters PBE.

The marks will sound much more dissimilar than similar if they are verbalized in their entireties as "PROJECT BEAUTY EXPO" or "PROJECT BEAUTY EXPO (PBE)," on the one hand, and "PBE AWARDS," on the other hand. The Board has recognized "the penchant of consumers to shorten marks," *Iron Balls*, 2024 WL 2844425, at \*25 (quoting *In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 WL 1045677, at \*3 (TTAB 2016)), and it is possible that the cited mark will be verbalized by use of the initialism "PBE" alone, in which case it would sound identical or very similar to Applicant's mark verbalized as "PBE" or "PBE AWARDS," but only after the relevant consumers have been exposed to the wording "PROJECT BEAUTY EXPO" and made aware of the marks' differences.

Finally, with respect to meaning, it is clear on the face of the cited mark that the initialism PBE means "PROJECT BEAUTY EXPO," while the meaning of the initialism PBE in Applicant's mark is unclear.<sup>14</sup> It seems unlikely, however, that a consumer familiar with the cited mark used in "Providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena" who separately encounters Applicant's mark used in "providing incentives to students to demonstrate excellence

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<sup>14</sup> Applicant claims that PBE would be understood to mean PHYSICAL BRAND ENHANCEMENT based on its claimed ownership of another registration containing those words, 4 TTABVUE 7, but that registration is not of record and, in any event, we must determine the commercial impression of the applied-for mark based solely on what is shown in the drawing in the application, which does not contain the words PHYSICAL BRAND ENHANCEMENT.

in the field of marketing and product packaging design through the issuance of awards” and “providing recognition and incentives by the way of awards and contests to demonstrate excellence in the field of marketing and product packaging design” would understand the letters PBE in Applicant’s mark to mean PROJECT BEAUTY EXPO.

The similarity of marks “is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003)). Notwithstanding the presence of the initialism PBE in both marks, we find that they are more dissimilar than similar when considered in their entireties. The first *DuPont* factor thus supports a conclusion that confusion is unlikely. *See Heil Co.*, 2024 WL 4925901, at \*32 (finding that the marks TRIPLEYE and 3RD EYE were more dissimilar than similar).

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

“The second *DuPont* factor considers the similarity or dissimilarity and nature of the goods [or services] as described in the involved application and cited registration,” *In re Samsung Display Co.*, Ser. No. 90502617, 2024 WL 3451873, at \*3 (TTAB 2024) (citing *DuPont*, 476 F.2d at 1361), and “contemplates whether the consuming public may perceive the respective goods [or services] as related enough to cause confusion about their source or origin.” *Id.* (citing *Naterra Int’l Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) (quoting *St. Helena Hosp.*, 774 F.3d at 752 (cleaned up) (internal citation omitted)).

“The goods [or services] need not be identical or even competitive to find a likelihood of confusion.” *Id.* (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 services] emanate from the same source.’” *Id.* (quoting *Coach Servs.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 WL 1431084, at \*10 (TTAB 2007)).

Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods [or services] are used together or used by the same purchasers; advertisements showing that the relevant goods [or services] 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 [services] . . . and the [services] . . . listed in the cited registration.

*In re OSF Healthcare Sys.*, Ser. No. 88706809, 2023 WL 6140427, at \*4 (TTAB 2023) (quoting *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at \*10 (TTAB 2021) (quoting *In re Ox Paperboard, LLC*, Ser. No. 87847482, 2020 WL 4530517, at \*6 (TTAB 2020)). As discussed below, the Examining Attorney relies here solely on third-party websites to show relatedness.

“[W]e must construe the services identified in the cited registration as broadly as reasonably possible ‘to include all [services] of the nature and type described therein,’” *id.* 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 registration ‘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)). “[W]e must also give the services identified in the application their full scope in our analysis of the second *DuPont* factor.” *Id.* (citation omitted).

Applicant argues that “clear and unambiguous differences exist between the services provided pursuant to [the cited registration], as compared to those of Applicant’s PBE AWARDS mark in class 041.” 4 TTABVUE 10. According to Applicant, the cited mark “relates to services in class 035, namely, providing a **live forum** for companies to showcase, display, demonstrate and promote new and innovative ideas, products, and services in the convention/meeting arena,” *id.* at 11 (emphasis in bold here in italics in Applicant’s brief), while Applicant’s services “relate to the awarding and incentivizing of those who demonstrate their packaging design skills.” *Id.*<sup>15</sup>

Applicant further argues that the Examining Attorney

generally states that a review of various websites shows the businesses provide the same services. Not only is this statement lacking in support, it is factually incorrect. The Applicant[ ] ha[s] limited [its] services to those specifically listed, namely, Educational services, awards, and recognition/incentives in the field of marketing and product packaging design. These services are clearly and unambiguously different from the beauty product expos and **live forums** listed under the registrant’s mark. The Applicant stresses the difference between the education based AWARDS of their mark and the beauty product EXPO of the Registrant’s mark. The services are vastly

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<sup>15</sup> Applicant cites the live hyperlink in its brief, 4 TTABVUE 11, which we have not considered under our ruling above on the Examining Attorney’s evidentiary objection.

different and the consumers of each category would clearly and readily ascertain the difference between both.

*Id.* at 12 (emphasis in bold here in italics in Applicant's brief).

Applicant concludes that

the thoughtful consideration and deliberation given to the procurement of the Registrant's beauty expo services, as well as the sophistication of design students seeking out Applicant's services which include educational programs and awards for product design, indicates that consumers of each of these separate and distinct types of services would easily distinguish between the offerings under the PBE PROJECT BEAUTY EXPO mark and the Applicant's PBE AWARDS mark, respectively. It is the Applicant's position that the services of these marks are not related, and not confusingly similar.

*Id.* at 12-13.

The Examining Attorney responds that

Applicant's services, e.g. "providing recognition and incentives by the way of awards and contests to demonstrate excellence in the field of marketing and product packaging design" are related to the registrant's services, e.g. "providing a live forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena", because of the way that they are provided to the consuming public.

6 TTABVUE 10.

According to the Examining Attorney, the Internet evidence of record, "consisting of websites showing the same businesses providing awards in the field of marketing and live forums for companies to showcase new ideas, products, and services, establishes that the same entities commonly provide the services identified in the



application and registration, and market those services under the same mark.” *Id.* at

11. The Examining Attorney describes the nine cited websites as follows:

- **“ihaf In-House Agency Forum-** Showing the same business offering awards for excellence in marketing and also a conference forum for showcasing new ideas in marketing.
- **Series Mania Forum-** Showing the same business providing awards for excellence in marketing and a forum for showcasing new marketing ideas.
- **Content Marketing Worlds-** Showing a business providing a forum to showcase new marketing ideas and also providing awards for excellence in marketing.
- **Marketing Outlook Forum-** Showing a business providing a forum to showcase new marketing ideas and also providing awards for excellence in marketing.
- **tmforum-** Showing a business providing a forum to showcase new marketing ideas and also providing awards for excellence in marketing.
- **Exhibitor Magazine –** Showing a business providing a forum to showcase new marketing ideas and also providing awards for excellence in marketing.
- **AIAA-** Showing a business providing awards for marketing excellence in the field of the aerospace industry and a forum for new marketing ideas for the aerospace industry.
- **The Ad Club-** Showing the same business providing awards for marketing excellence and forums for new marketing ideas.
- **APA-** Showing the same business offering a floor expo forum for new marketing ideas and providing awards for marketing excellence.”

*Id.* The Examining Attorney concludes that these websites show that “consumers commonly encounter awards for excellence in the field of marketing provided from the same sources, under the same brands of marks, as forums for showcasing new ideas, products, and services.” *Id.* at 11-12.

We begin our analysis “with the identifications of . . . services in the registration and application under consideration.” *OSF Healthcare Sys.*, 2023 WL 6140427, at \*5 (quoting *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at \*3 (TTAB 2019)). The language in the involved identifications contains not only descriptions of the nature of the services, but also the particular fields in which they are rendered. The services identified in the cited registration are “Providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services **in the convention/meeting management arena.**” (emphasis added). The two services identified in the application are “Educational services, namely, providing incentives to students to demonstrate excellence **in the field of marketing and product packaging design** through the issuance of awards” (emphasis added), and “Providing recognition and incentives by the way of awards and contests to demonstrate excellence **in the field of marketing and product packaging design.**” (emphasis added).<sup>16</sup> The services identified in the cited registration are limited to “the convention/meeting management arena,”<sup>17</sup> while the

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<sup>16</sup> The “Examining Attorney need not prove, and we need not find, similarity as to [both of the services] listed in the description of [services] in the application.” *OSF Healthcare Sys.*, 2023 WL 6140427, at \*5 (quotation and quotation marks omitted). “[I]t is sufficient for finding a likelihood of confusion if relatedness is established for [either service] encompassed by the identification of [services] within [Class 41] in the application.” *Id.* at \*4 (quoting *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 WL 4269983, at \*4 n.5 (TTAB 2015)); *see also Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

<sup>17</sup> “The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format or have fixed regular editions.” *Weiss*, 2024 WL 3617597, at \*6 n.30 (quotation omitted). We take judicial notice that in the context of the language in the identification of services in the cited registration, the word “arena” means “a sphere of interest, activity, or competition,” and is essentially a synonym for the word “field.” MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on January 21, 2025).

two services identified in the application are limited to “the field of marketing and product design.”<sup>18</sup>

Given the field-of-use limitations in the involved identifications, there is nothing on the faces of the identifications to suggest that the services are intrinsically related. *Cf. OSF Healthcare Sys.*, 2023 WL 6140427, at \*8 (holding that the Class 35 services identified in the application as “business consulting services provided to public, private, academic, faith-based, community and other organizations, entities, individuals and professionals for the purpose of having them act within a coordinated ecosystem to provide services in the field of community health, mental health, physical health and wellness” encompassed the Class 35 services identified in the cited registration as “consulting services in the field of patient relationship management for healthcare workers,” making it unnecessary to discuss “the Examining Attorney’s Internet and registration evidence regarding relatedness in Class 35”).

The Examining Attorney must show relatedness with respect to the services as actually identified, not with respect to broadened or generalized versions of the identifications. *Id.* at \*12. Accordingly, we must examine the websites cited by the Examining Attorney to determine whether they offer both (1) “Educational services, namely, providing incentives to students to demonstrate excellence **in the field of marketing and product packaging design** through the issuance of awards,” or

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<sup>18</sup> We construe the two similar identifications in the application to refer to a single “field” that involves both “marketing **and** product design” (emphasis added), not two different fields.

“Providing recognition and incentives by the way of awards and contests to demonstrate excellence **in the field of marketing and product packaging design**” (emphasis added), and (2) “Providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services **in the convention/meeting management arena** (emphasis added).”

In *OSF Healthcare Sys.*, the Board explained that

[w]ith respect to Internet evidence, in determining exactly what services are offered through the respective websites, we acknowledge that services 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. . . . In such instances, we must determine the nature of the services that are offered, and decide whether they fall within the full scope of the language in the involved identifications.

*Id.* at \*10 (citation omitted).

The Internet webpages cited by the Examining Attorney do not offer services that fall within the full scope of both sets of identifications. The Marketing Outlook Forum website states that the associated awards program “was developed to encourage and recognize excellence in the field of travel and tourism marketing” based on matters pertaining to “the travel and tourism industry.”<sup>19</sup> There are no references to the fields of marketing and product packaging design or convention/meeting management.<sup>20</sup>

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<sup>19</sup> January 23, 2024 Office Action at TSDR 8.

<sup>20</sup> *Id.* at TSDR 8-13. Contrary to the Examining Attorney’s characterization, there is also no reference to providing “a forum to showcase new marketing ideas.” 6 TTABVUE 11.

The tmforum website states that the related awards program has “recognized the world’s leading companies for their innovative achievements spanning ODA implementation, network monetization and partnering, autonomous networks, AI innovation, and benefits to people and planet.”<sup>21</sup> There are no references to the fields of marketing and product packaging design or convention/meeting management.<sup>22</sup>

The ihaf In-House Agency Forum website states that the IHAF Conference and related awards are “the premier event for marketing and creative professionals to network, learn, and grow together.”<sup>23</sup> The focus audience appears to be what the website calls “internal agencies and corporate brand teams.”<sup>24</sup> There are no references to the fields of product packaging design or convention/meeting management.<sup>25</sup>

The Series Mania Forum website awards a “Best Marketing Initiative Award” to “a series’ promotion for the viewing audience and professionals from the series industry.”<sup>26</sup> The website also contains a link to a “FORUM (Professional).”<sup>27</sup> Eligible

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<sup>21</sup> January 23, 2024 Office Action at TSDR 14. The website defines “ODA” as “Open Digital Architecture.” *Id.* at TSDR 15.

<sup>22</sup> *Id.* at TSDR 14-16. Contrary to the Examining Attorney’s characterization, there is again no reference to providing “a forum to showcase new marketing ideas.” 6 TTABVUE 11.

<sup>23</sup> January 23, 2024 Office Action at TSDR 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at TSDR 17-19. The Examining Attorney argues that the website shows “a conference forum for showcasing new ideas in marketing.” 6 TTABVUE 11. Even assuming that the conference provides the type of “forum” referred to under the broadest reasonable construction of the identification of services in the cited registration, there is no evidence that the forum involves the “convention/meeting management” field.

<sup>26</sup> January 23, 2024 Office Action at TSDR 22.

<sup>27</sup> *Id.*

participants include “creative / social / influencer agencies, producers / studios, international distributors and/or broadcasters / streamers” who are involved with a “fiction series.”<sup>28</sup> There are no references to the fields of marketing and product packaging design or convention/meeting management.<sup>29</sup>

The Content Marketing World website states that it “brings together marketing leaders, content creators, communications experts, agencies, and creative professionals from around the world.”<sup>30</sup> One page discusses “Content Marketing Awards,” but makes no reference to product packaging design or the convention/meeting management field.<sup>31</sup>

The website of Exhibitor Magazine describes the publication as involving “Best Practices in Trade Show and Event Marketing,”<sup>32</sup> and offers various awards “Honoring Excellence in Trade Show Exhibit Promotions.”<sup>33</sup> The Examining Attorney again claims that this website “show[s] a business providing a forum to showcase new marketing ideas and also providing awards for excellence in marketing.” 6 TTABVUE 11. Even if we construe the phrase “Trade Show Exhibit Promotions” to fall within the full scope of the “convention/meeting management” field, there is no reference to awards for “product design” and nothing showing that the website provides a “forum”

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<sup>28</sup> *Id.* at TSDR 23.

<sup>29</sup> *Id.* at TSDR 20-25. The nature of the referenced “Forum” is unclear, but there is no evidence that it pertains in any manner to the “convention/meeting management” field.

<sup>30</sup> April 9, 2024 Final Office Action at TSDR 7.

<sup>31</sup> *Id.* at TSDR 6-10.

<sup>32</sup> *Id.* at TSDR 11.

<sup>33</sup> *Id.* at TSDR 11-12.

for companies to “showcase, display, demonstrate and promote new and innovative ideas, products and services” in the “convention/meeting management” field.

The AIAA website, which bears the caption “Shaping the Future of Aerospace,” advertises the 2024 AIAA Science and Technology Forum and Exposition (AIAA SciTech Forum),” which is described as the “largest event for aerospace research, development and technology in the world—bringing together 11 individual technical disciplines” in a self-described “forum.”<sup>34</sup> The website discusses the 2024 AIAA Awards Gala, which recognized “individuals who have made tremendous achievements during their remarkable careers and continue to shape the aerospace industry.”<sup>35</sup> The website does not indicate that these awards pertain in any way to “the field of marketing and product packaging design” in the aerospace industry. There is also nothing on the website showing that the AIAA provides a forum pertaining to the “convention/meeting management” field.

The website of The Ad Club Boston discusses the Hatch Awards without specifying the criteria or subject area for the awards.<sup>36</sup> It is not clear that these awards pertain to “the field of marketing and product packaging design.” There is also nothing on the website showing that The Ad Club provides a forum pertaining to the “convention/meeting management” field.<sup>37</sup>

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<sup>34</sup> *Id.* at TSDR 15-16. The Examining Attorney acknowledges that this website pertains solely to the aerospace industry. 6 TTABVUE 11.

<sup>35</sup> April 9, 2024 Final Office Action at TSDR 17.

<sup>36</sup> *Id.* at TSDR 21-22.

<sup>37</sup> *Id.* at TSDR 21-25.

Finally, the website at [personalizationpros.org](http://personalizationpros.org) discusses the International Personalization Expo, described as “the Personalization Industry’s Largest Trade Show,” and lists an award described as the “Gold Obelisk Award.”<sup>38</sup> The website does not indicate that the Gold Obelisk Award pertains in any way to “the field of marketing and product packaging design,” and there is also nothing on the website showing that the APA provides a forum pertaining to the “convention/meeting management” field.<sup>39</sup>

As noted above, the Examining Attorney repeatedly claims that these websites show that the same businesses provide awards for excellence in marketing and a forum to showcase new marketing ideas. 6 TTABVUE 11. “That is not the issue.” *OSF Healthcare Servs.*, 2023 WL 6140427, at \*12. “We must determine whether Applicant’s [“educational services, namely, providing incentives to students to demonstrate excellence in the field of marketing and product packaging design through the issuance of awards” and “providing recognition and incentives by the way of awards and contests to demonstrate excellence in the field of marketing and product packaging design”] are related to the specific [services of “providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena].” *Id.* “The Examining Attorney effectively broadened and generalized [those] identification[s] of

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<sup>38</sup> *Id.* at TSDR 26. The APA, the owner of the website, describes itself as “the organization for retailers and suppliers of personalized and customized items.” *Id.* at TSDR 28.

<sup>39</sup> *Id.* at TSDR 26-28.



services and submitted evidence addressed to the broader identification[s], not the actual one[s].” *Id.*

The Examining Attorney provided no evidence that the types of services identified in the application and in the cited registration originate from the same source, or would be perceived as originating from the same source under the same mark. The second *DuPont* factor thus supports a conclusion that confusion is unlikely.

### C. Purchase Conditions and Degree of Consumer Care

The fourth *DuPont* factor concerns the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361.

Applicant argues that “the sophisticated purchaser of the services under the [involved] marks would **not** be confused into believing that they emanate from the same source, despite the Examiner’s statements that they both generally relate to ‘awards for marketing and a forum.’” 4 TTABVUE 12 (emphasis in bold here in italics in Applicant’s brief). According to Applicant,

the thoughtful consideration and deliberation given to the procurement of the Registrant’s beauty expo services, as well as the sophistication of design students seeking out Applicant’s services which include educational programs and awards for product design, indicates that consumers of each of these separate and distinct types of services would easily distinguish between the offerings under the PBE PROJECT BEAUTY EXPO mark and the Applicant’s PBE AWARDS mark, respectively.

*Id.* at 12-13.

The Examining Attorney responds that “Applicant has submitted no evidence to demonstrate that consumers for the parties’ services are sophisticated, or otherwise likely to exercise ‘thoughtful consideration and deliberation’ when deciding to purchase those services.” 6 TTABVUE 13 (quoting 4 TTABVUE 10).

As discussed above, Applicant’s services appear to be directed to students in design and engineering schools who seek recognition in the form of awards for “excellence in the field of marketing and product packaging design.” We must base our analysis under the fourth *DuPont* factor on the least sophisticated potential purchaser of those services, *Samsung Display*, 2024 WL 3451873, at \*9 (citing *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1325 (Fed. Cir. 2014), and there is no evidence that the least sophisticated potential seeker of recognition and awards for marketing and product design would exercise anything more than ordinary care in deciding where to seek such recognition. The fourth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

#### **D. Summary**

The key first two *DuPont* factors both support a conclusion that confusion is unlikely, while the fourth *DuPont* factor is neutral. The marks both contain the initialism PBE, but are more dissimilar than similar when considered in their entireties, and the record does not show that the same entities commonly provide, under the same marks, “incentives to students to demonstrate excellence in the field of marketing and product packaging design through the issuance of awards” and “recognition and incentives by the way of awards and contests to demonstrate

excellence in the field of marketing and product packaging design,” as well as “a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena.” We conclude, based on the record as a whole, that a consumer familiar with the cited mark for “Providing a forum for companies to showcase, display, demonstrate and promote new and innovative ideas, products and services in the convention/meeting management arena” who separately encounters Applicant’s mark for “Educational services, namely, providing incentives to students to demonstrate excellence in the field of marketing and product packaging design through the issuance of awards; providing recognition and incentives by the way of awards and contests to demonstrate excellence in the field of marketing and product packaging design” is unlikely to believe that the respective services have a common source.

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