

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 28, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Naturel Goods LLC

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Serial No. 98702670

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Parviz Ali, pro se, for Naturel Goods LLC.

Matt Einstein, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Lykos, Elgin, and Bradley, Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:

Applicant Naturel Goods LLC seeks registration on the Principal Register of the mark B NATUREL and design (“NATUREL” disclaimed), shown below, for “Body and beauty care cosmetics; Hair care creams; Hair care lotions; Hair care preparations; Beauty creams for body care; Cosmetic preparations for body care; Cosmetics sold as an integral component of non-medicated skincare preparations” in International Class 3:¹

¹ Ser. No. 98702670 was filed on August 16, 2024 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based on Applicant’s claimed first use of the mark and first use of the mark in commerce at least as early as February 1, 2023.



The application includes the following mark description and other statements:

- The mark consists of a stylized letter “B” enclosed in a square followed by the word “NATUREL” in script font.
- Color is not claimed as a feature of the mark.
- The English translation of NATUREL in the mark is NATURAL.
- The name(s), portrait(s), and/or signature(s) shown in the mark does not identify a particular living individual.

The Trademark Examining Attorney refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used in connection with the identified goods, so resembles the registered stylized mark B NATURAL (“NATURAL” disclaimed), shown below, for “Non-medicated cosmetics and toiletry preparations; perfumery, essential oils; cleaning and abrasive preparations for human skin” in International Class 3² that it is likely to cause confusion, to cause mistake, or to deceive:



² Registration No. 7088903 issued on the Principal Register on June 27, 2023. The mark is described as “a stylized letter ‘B’ above the word ‘NATURAL’ in smaller stylized font.”

After the refusal was made final, Applicant requested reconsideration, which was denied. The appeal is now fully briefed.³ We have reviewed and considered all of the arguments in the briefs and evidence of record.

For the reasons set forth below, we **affirm** the refusal to register.

I. Applicant's Briefs

Before proceeding to the merits of the case, we comment on Applicant's briefs, which violate Board rules in several respects. Even where parties such as Applicant appear pro se before the Board, strict compliance with all applicable rules is required. *Hole in 1 Drinks, Inc. v. Lajtay*, No. 92065860, 2020 TTAB LEXIS 9, at *3.

First, Applicant's briefs are single-spaced in violation of Board rules. Trademark Rule 2.126(b)(1), 37 C.F.R. § 2.126(b)(1); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1203.01 (June 2025). Because the Examining Attorney did not object, and it appears the briefs would not violate the page limits if double-spaced, *see* Trademark Rule 2.142(b)(2), 37 C.F.R. § 2.142(b)(2), we have exercised our discretion to consider them.

Second, it was unnecessary and unhelpful for Applicant to attach filings from the prosecution of its application to its appeal brief.⁴ *See In re Allegiance Staffing*, No. 85663950, 2015 TTAB LEXIS 180, at *3 (practice of attaching to appeal brief copies

³ Applicant's brief and reply brief are at 5 TTABVUE and 8 TTABVUE. The Examining Attorney's brief is at 7 TTABVUE. Citations to the prosecution record refer to the USPTO Trademark Status and Document Retrieval system (TSDR) in the downloadable .pdf format by page number. References to the briefs on appeal refer to the Board's TTABVUE docket system. *In re Integra Biosciences Corp.*, No. 87484450, 2022 TTAB LEXIS 17, at *6.

⁴ *See* 5 TTABVUE 10-33.

of the same exhibits submitted with responses is discouraged); *In re SL&E Training Stable Inc.*, No. 78806669, 2008 TTAB LEXIS 55, at *15 n.9 (attaching exhibits to brief of material already of record only adds to the bulk of the file, and requires Board to determine whether attachments had been properly made of record). We have disregarded these materials.

Finally, Applicant's submissions appear to have been prepared with the assistance of an artificial intelligence large language model (such as ChatGPT). Applicant cites to some cases that do not clearly stand for the propositions for which they are cited. It is the duty of all parties before the Board to review and verify the contents of each paper presented for consideration. *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 utilizing artificial intelligence to draft papers must confirm the accuracy of all facts and citations to case law). Applicant is **cautioned** that it has a duty to verify all legal authorities in the future, or face possible sanctions

II. Likelihood of Confusion

Section 2(d) of 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, mistake, or deception. 15 U.S.C. § 1052(d); *see also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours*

& Co., 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role and some factors may not be relevant. *Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (citing *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). In addition, varying weight may be assigned to each factor depending on the evidence presented, and “any one of the factors may control a particular case.” *Id.*; *see also Charger Ventures*, 64 F.4th at 1381. Although we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the goods or services. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (citing *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)).

Below, we first consider the similarity of the goods and channels of trade; followed by the similarity of the marks. We conclude by briefly addressing other arguments raised by Applicant.

A. The Goods and Trade Channels

We start with the second *DuPont* factor, which “considers the similarity or dissimilarity and nature of the goods as described in the involved application and cited registration ... and contemplates whether the consuming public may perceive the respective goods as related enough to cause confusion about their source or

origin.” *In re Samsung Display Co.*, No. 90502617, 2024 TTAB LEXIS 258, at *6 (cleaned up; citations omitted).

“We begin with the identifications of ... [goods] in the registration and application under consideration.” *In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *10 (cleaned up; citation omitted). It is sufficient for a likelihood of confusion that relatedness is established for any item in the identification of goods within a particular class in the registration. *See In re i.am.symbolic, llc*, No. 85044494, 2015 TTAB LEXIS 369, at *8 (“Likelihood of confusion must be found if there is likely to be confusion with respect to any item in a class that comes within the identification of goods in the application and cited registration.”), *aff’d*, 866 F.3d 1315 (Fed. Cir. 2017). The relatedness of goods may be established based on various evidence, including the language of the involved identifications of goods, which may show, on the face of the identifications, that they are literally or legally identical, or otherwise intrinsically related. *OSF Healthcare*, 2023 TTAB LEXIS 353, at *9.

Applicant’s goods include “Body and beauty care cosmetics” and the goods in the cited registration include “non-medicated cosmetics and toiletry preparations.” The Examining Attorney argues that the cited registration’s broad identification for “non-medicated cosmetics” encompasses Applicant’s more narrowly-identified cosmetics for body and beauty care, and thus these goods are legally identical.⁵ We agree. In addition, the cited registration includes “non-medicated...toiletry preparations.” We take judicial notice that a “toiletry” is “an article or preparation (such as toothpaste,

⁵ 7 TTABVUE 6.

shaving cream, or cologne) used in cleaning or grooming oneself.”⁶ Thus, the broad “toiletry preparations” includes Applicant’s more narrowly specified goods, all of which are used in personal cleaning and grooming.

Applicant “recognizes that the identifications contain overlapping Class 003 terminology.”⁷ Applicant argues that the Board should consider actual differences between the goods.⁸ Applicant’s arguments based on actual composition of its and Registrant’s products⁹ is not persuasive because we analyze the *DuPont* factors based on the identifications present in the application and registration. We cannot read limitations into identifications of goods based on either argument or evidence of actual use. *See, e.g., In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *37-38 (Board may not import restrictions into identification based on real-world conditions); *In re Bercut-Vandervoort & Co.*, No. 73448806, 1986 TTAB LEXIS 124, at *5-6 (applicant may not restrict the scope of the goods identified in the application or cited registration by argument or extrinsic evidence showing what those goods are).

Thus, we find that the goods in the application and cited registration are legally identical in part.

⁶ MERRIAM-WEBSTER DICTIONARY (www.merriam-webster.com/dictionary/toiletry, accessed May 28, 2026). The Board may take judicial notice of dictionary definitions, including online dictionaries, and we elect to do so here. *In re Omniome, Inc.*, No. 87661190, 2019 TTAB LEXIS 414, at *7 n.17.

⁷ 8 TTABVUE 3; *see also id.* at 6 (“[E]ven with overlapping goods, confusion is not presumed unless the marks, taken as a whole, are sufficiently similar”).

⁸ *Id.* at 3 (“Even where goods may be related, the Board must consider how purchasers will perceive the marks as used.”).

⁹ *See* 5 TTABVUE 5-6.

We turn next to the third *DuPont* factor, which considers the “similarity or dissimilarity of established, likely-to-continue trade channels.” *Samsung Display*, 2024 TTAB LEXIS 258, at *17 (quoting *DuPont*, 476 F.2d at 1361). Because the goods are legally identical in part, we must presume that those goods travel through the same channels of trade and are offered to the same or overlapping classes of purchasers. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012)). For the same reasons as above, Applicant’s arguments about real-world conditions of sale and trade channels are not persuasive, inasmuch as (even if supporting evidence was of record) such limitations are not included in the application or registration.¹⁰ *Embiid*, 2021 TTAB LEXIS 168, at *37-38; *Bercut-Vandervoort*, 1986 TTAB LEXIS 124, at *5-6.

We find that the second and third *DuPont* factors strongly favor a finding of likelihood of confusion.

B. The Marks

Under the first *DuPont* factor, “we consider the ‘similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *In re Ye Mystic Krewe of Gasparilla*, No. 90522364, 2025 TTAB LEXIS 412, at *9 (quoting *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13 (citation omitted), *aff’d*

¹⁰ See *id.* at 6 (arguing real-world market context shows that the parties’ current trade channels and consumer bases are distinct).

per curiam, 777 F. App'x 516 (Fed. Cir. 2019); accord *Krim-Ko Corp. v. Coca-Cola 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).

“[S]imilarity 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)). The proper test regarding similarity “is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai*, 901 F.3d at 1373 (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 trademarks.” *In re St. Julian Wine Co.*, No. 87834973, 2020 TTAB LEXIS 196, at *13. We also “keep in mind that where, as here, the goods are identical in part, “the degree of similarity necessary to support a conclusion of likely confusion declines.” *Ye Mystic Krewe of Gasparilla*, 2025 TTAB LEXIS 412, at *9-10 (quoting *Viterra*, 671 F.3d at 1363).

1. Doctrine of Foreign Equivalents

At the outset, we address the preliminary issue of application of the doctrine of foreign equivalents to Applicant’s mark, which contains a French word: NATUREL. Under the doctrine of foreign equivalents, foreign words used as a mark are translated into English and then tested for likelihood of confusion. *In re Vetements Grp. AG*, 137 F.4th 1317, 1325 (Fed. Cir. 2025), *cert. denied*, No. 25-215, 2026 U.S. LEXIS 373 (Jan. 12, 2026). Generally, the Board applies the doctrine of foreign

equivalents when one mark is in the English language and the other is in a foreign language. *Ricardo Media Inc. v. Inventive Software, LLC*, No. 91235063, 2019 TTAB LEXIS 283, at *19. The Federal Circuit has held that “[t]he doctrine should be applied only when it is likely that the ordinary American purchaser would stop and translate [the foreign-language word] into its English equivalent.” *Vetements*, 137 F.4th at 1323-24 (quoting *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005) (internal quotation and quotation marks omitted)).³⁶ As noted in *Vetements*, this depends on the capability of the U.S. population to translate the word, that is, whether an “appreciable” number would do so. *Id.* at 1331. Also, whether a purchaser with “ordinary sensibilities” would make the translation, as “sometimes even a native speaker would not perform a literal translation because it would be irrelevant in the context of the specific goods, services, or market.” *Id.*

The Examining Attorney made of record a translation of “naturel” as “natural,” which is consistent with the translation statement Applicant provided with its application.¹¹ Further, the Examining Attorney argues that the evidence of record shows that there are 1.3 million French speakers in the United States and that French is the seventh most commonly spoken language in this country.¹² Thus, “the French language is a common, modern language spoken by an appreciable number of Americans capable of translating the term [to “natural”]; and there is no evidence of

¹¹ March 11, 2025 Office Action at TSDR 8.

¹² 7 TTABVUE 4; see August 7, 2025 Denial of Request for Reconsideration at TSDR 6-18 (evidence of commonness of French language in the United States).

any contrary meaning.”¹³ The evidence shows that an appreciable number of consumers in the United States speak French, a modern, commonplace language. Moreover, the near identity of the French NATUREL and its corresponding English word NATURAL make it very likely that consumers would stop and translate the word from French to English. In the context of the entirety of the literal element of the mark (B NATUREL), the foreign word is very likely to be translated as the phrase “BE NATURAL,” the same as the cited mark.

Nonetheless, Applicant argues that application of the doctrine is a “guideline,” not an automatic rule where it does not reflect marketplace reality.¹⁴ Applicant argued that “[t]he record here does not establish that consumers encountering Applicant’s stylized mark would stop and translate ‘NATUREL’ rather than perceive it as part of a source-identifying brand presentation.”¹⁵ Applicant has the burden backwards; it has not demonstrated that it is unlikely that U.S. consumers will stop and translate the term. *See id.* at 1331 (“[T]he burden is on the party opposing translation to show that it is unlikely the ordinary [U.S.] purchaser would stop and translate the word into its English equivalent. Placing the burden on a party opposing translation takes into account the well-recognized tenet that ‘words from modern languages are generally translated into English.’”) (cleaned up). Moreover, Applicant

¹³ 7 TTABVUE 4.

¹⁴ 8 TTABVUE 3.

¹⁵ *Id.*

conceded in its brief that its “mark uses the spelling NATUREL, which consumers recognize as the French form of ‘natural.’”¹⁶

Therefore, we find that the doctrine of foreign equivalents applies, and the terms “NATUREL” and “NATURAL” in each mark would be understood by U.S. consumers to mean “NATURAL.”

2. Similarity or Dissimilarity of the Marks



Again, the marks are (NATUREL disclaimed) and (NATURAL disclaimed). Applicant’s argument centers on the “non-English origin” of the term NATUREL, which it claims conveys a “sophisticated and boutique positioning, and often a premium skincare association” and a “French-inspired, boutique herbal skincare brand.”¹⁷ Applicant also points to the logo presentation of its mark as a distinguishing feature.¹⁸

The Examining Attorney counters:

The marks are identical in sound and meaning and create the same overall commercial impressions. The marks differ by only a single letter vowel substitution. There is no correct pronunciation of a mark; thus, consumers may pronounce a mark differently than intended by the mark owner In the present case, the compared marks could clearly be pronounced the same. Such similarity in sound

¹⁶ 5 TTABVUE 4.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* To the extent Applicant again relies on the real-world use of its mark with “the domain name WWW.NATURELGOODS.COM placed circularly” and “additional circular design elements and a QR code,” *id.* at 4, we can only consider the applied-for mark.

alone may be sufficient to support a finding that the compared marks are confusingly similar.¹⁹

In reply, Applicant argues that its mark is a stylized/composite mark with “distinct spelling” that “contribute materially to its overall commercial impression.”²⁰ It then confusingly (and erroneously) argues that “[t]he cited registration is a standard-character mark, and the Board’s analysis must evaluate the marks as consumers encounter them, not as abstract word strings.”²¹ The cited registration, of course, is not a standard character mark; like Applicant’s mark, it is a stylized mark.

We agree with the Examining Attorney that the marks are very similar. Of course, to begin with the literal elements of the marks are nearly identical in sight and sound: B NATURAL and B NATUREL. The slight misspelling of NATURAL does not detract from the visual and phonetic similarity of the marks. *See, e.g., Krim-Ko Corp.*, 390 F.2d at 732 (“Unless both the one speaking and the one hearing the two words are particularly careful, the sound similarities of ‘V’ and ‘B’ may lead to a confusion in the recall process, so as to negate the effect of the differences in meaning of the words.”).

Nor are the visual differences in the presentation of the marks sufficient to distinguish the marks. As noted above, each mark includes a stylized uppercase B. The words NATURAL and NATUREL appear in each of the marks directly below the stylized B. The fonts are different and present a distinction, along with the box

¹⁹ 7 TTABVUE 3 (citations omitted).

²⁰ 8 TTABVUE 3.

²¹ *Id.*

around the letter B in Applicant's mark, but these differences are eclipsed by the similarities in the marks as discussed above. The literal terms B NATURAL and B NATUREL are how consumers would call for the goods. See *L.C. Licensing, Inc. v. Berman*, No. 91162330, 2008 TTAB LEXIS 756, at *9 ("In terms of sound, obviously the design portion of opposer's mark will be not be spoken, and thus, the marks are identical in this respect. Further, it is well settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods.") (citing *In re Appetito Provisions Co.*, No. 73423405, 1987 TTAB LEXIS 47, at *3).

Under the doctrine of foreign equivalents, the literal elements of the marks have identical connotations. But even if the doctrine does not apply and U.S. consumers would not translate Applicant's mark into English but instead "take it as it is," see *In re Tia Maria, Inc.*, 1975 TTAB LEXIS 130, at *4, the result under this *DuPont* factor would still be the same because overall the marks are similar in sound, appearance, connotation, and commercial impression. In other words, even if the doctrine does not apply, U.S. consumers would see and pronounce NATURAL and NATUREL in almost the exact same manner and glean the same meaning from the near identical terms.

We also reject Applicant's argument that the applied-for mark conveys a different commercial impression due to the use of the French word NATUREL. Rather, whether with or without the translation, the marks B NATURAL and B NATUREL convey the same connotation and overall commercial impression to consumers – the phrase "Be Natural" – appropriate for cosmetic and skincare products. For example,

Applicant made of record an Amazon listing for its skincare products indicating that they are “100% Vegan and Organic,” “plant-based,” and “free from animal derived elements.”²² A label indicates that Applicant’s product is “100% Natural.”²³ Product reviews confirm that consumers “use this product as a natural cleanser for my face,” and “aligns with my commitment to natural ingredients,”²⁴ confirming the connotation of the term NATUREL in the context of Applicant’s cosmetic products.

We find that the marks, considered in their entirety, are similar in sight, sound, meaning, and overall commercial impression. *See Inn at St. John’s*, 2018 TTAB LEXIS 170, at *13 (similarity in any element under the first *DuPont* factor may be sufficient to find the marks confusingly similar). Given the fallibility of consumers’ memories, we find that Applicant’s mark and the cited mark are similar. Accordingly, the first *DuPont* factor favors a finding of likelihood of confusion.

C. Weakness of the Cited Mark

The sixth *DuPont* factor “allows Applicant to contract th[e] scope of protection by adducing evidence of [t]he number and nature of similar marks in use on similar goods.” *Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 251, at *24 (quoting *DuPont*, 476 F.2d at 1361). Applicant argues that the term NATURAL in the cited mark is weak in that “[t]he term ‘Natural’/‘Naturel’ is extremely common in the cosmetics industry. Numerous products and brands

²² June 9, 2025 Response to Office Action at TSDR 7.

²³ *Id.* at TSDR 14.

²⁴ *Id.* at TSDR 10.

incorporate ‘natural’ or ‘naturel’ to signal that items are plant-based, ecofriendly, or minimally processed,” including brand names incorporating “NATURAL,” “ALL NATURAL,” or “NATUREL” and “widespread descriptive usage such as ‘100% natural ingredients,’ ‘natural formula,’ etc.”²⁵ This argument is not supported by evidence, and argument is not evidence. *Cai*, 901 F.3d at 1371.

Nonetheless, the term NATURAL has been disclaimed (as is NATUREL in Applicant’s mark) and thus is conceptually weak. Even allowing that there is inherent weakness in the common term NATURAL and its equivalent, the differences between the marks in their entirety are minimal and the weakness of the shared term has little impact on the analysis. We find that the sixth *DuPont* factor is neutral.

D. Absence of Actual Confusion

Applicant also argues there is an absence of actual confusion over a meaningful period of concurrent use, which we construe as relevant to the seventh and eighth *DuPont* factors.²⁶ There is no evidence in the record regarding the extent of Applicant’s or Registrant’s use of the marks at issue, and therefore no evidence regarding whether there has been a meaningful opportunity for confusion to occur.

Applicant made of record evidence to support the argument that it offers its product on Amazon.com.²⁷ Even if there were a probative declaration or other

²⁵ 5 TTABVUE 6-7.

²⁶ *Id.* at 7.

²⁷ June 9, 2025 Office Action Response at TSDR 7-10; July 10, 2025 Request for Reconsideration at TSDR 10-14. The identical printouts from Amazon.com shows that the product is “currently unavailable.” *E.g.*, June 9, 2025 Office Action Response at TSDR 7.

evidence in the record to support Applicant's argument that its "marketplace presence is limited and that sales have been low",²⁸ we'd still be getting only "half the story," because Registrant is not a party to this case. *In re Guild Mortg.*, No. 86709944, 2020 TTAB LEXIS 17, at *23 ("[I]n this ex parte context, there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion."). We have no evidence of Registrant's use in the record. In addition, the subject application provides a first use date of February 1, 2023, which even if true (and there is no evidence in the record to support the claim of use as of this date)²⁹ is not sufficient time for confusion to develop.

The lack of actual confusion is of little relevance. *See Majestic Distilling*, 315 F.3d at 1317 ("Majestic's uncorroborated statements of no known instances of actual confusion are of little evidentiary value ... A showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion. The opposite is not true, however. The lack of evidence of actual confusion carries little weight ... especially in an ex parte context.") (citation omitted). We find the seventh and eighth *DuPont* factors to be neutral in our analysis.

²⁸ 5 TTABVUE 7.

²⁹ *See* Trademark Rule 2.122(b)(2), 37 C.F.R. § 2.122(b)(2) ("The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence.")

E. Equitable and Policy Considerations

Finally, Applicant argues that “Equitable and Policy Considerations Support Registration,”³⁰ which we construe as relevant to the thirteenth *DuPont* factor, “[a]ny other established fact probative of the effect of use.” 476 F.2d at 1361. It is a “catchall” factor, which “accommodates the need for flexibility in assessing each unique set of facts....” *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *19 (quoting *In re Strategic Partners Inc.*, No. 77903451, 2012 TTAB LEXIS 80, at *6).

As noted above, Applicant argues without evidence that its sales are low, it is a “very small U.S. business operated on a modest budget,” and it supports women’s health causes and empowerment.³¹ Although we sympathize with Applicant, this is not the type of evidence, even if it was of record, that we would consider as relevant to the thirteenth *DuPont* factor, which is “rarely invoked.” *Id.* The thirteenth factor is neutral.

F. Summary on Likelihood of Confusion

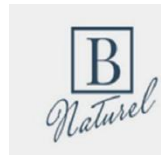
Finally, we must weigh the findings we have made on the *DuPont* factors for which there has been evidence and argument in this appeal. *Charger Ventures*, 64 F.4th at 1381 (“[I]t is important...that the Board...weigh the *DuPont* factors used in its analysis *and* explain the results of that weighing.”).

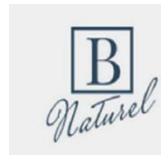

³⁰ *Id.* at 7-8.

³¹ *Id.*

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In this case, the first, second, and third *DuPont* factors weigh heavily in favor of likelihood of confusion given the similarity of the marks and legally identical nature of the goods provided in overlapping trade channels to the same classes of consumers. The other factors are neutral.



We conclude that confusion is likely between  and  for the legally identical goods in Class 3.

Decision

The refusal to register application Ser. No. 98702670 is **affirmed** under Trademark Act Section 2(d).