This Opinion is Not a
Precedent of the TTAB

Mailed: October 28, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Leo G Bressette

Serial No. 99020217

Leo G Bressette, pro se.

Claudia A. Kopenski, Trademark Examining Attorney, Law Office 129,
Pam Willis, Managing Attorney.

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

Opinion by O'Connor, Administrative Trademark Judge:

Leo G Bressette ("Applicant") seeks registration on the Principal Register of the standard-character mark HIBOU BLANC for "candles; scented candles; scented soy candles; melt tarts, namely, scented wax to be melted slowly with a warmer," in International Class 4.[1] The application contains the following statement: "The English translation of the French wording Hibou Blanc in the mark is White Owl."

[1] Application Serial No. 99020217 (the "Application") was filed on January 27, 2025, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's averment of a bona fide intent to use the mark in commerce.

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that the mark, when used in connection with the identified goods, is likely to cause confusion, mistake or deception with the standard-character mark THE WHITE OWL CANDLE COMPANY (CANDLE COMPANY disclaimed), registered on the Principal Register for "candles; candle contained in a clamshell; scented candles; soy candles," in International Class 4.[2]

When the refusal was made final, Applicant requested reconsideration, which was denied. Applicant appealed, and Applicant and the Examining Attorney have filed briefs. For the reasons that follow, we affirm the refusal to register.

I. Examining Attorney's Objection

Before turning to the merits, we address the Examining Attorney's objection to evidence provided for the first time with Applicant's appeal brief, specifically the Internet evidence attached as Exhibits 1-6 and 11-22 thereto.[3] "The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal." Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *see also* TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 1207.01 (2026). The materials attached as exhibits to Applicant's brief were not submitted during prosecution and thus are untimely. We therefore sustain the Examining Attorney's objection and do not consider Exhibits 1-6 and 11-22 to Applicant's brief. Nor do we

[2] Reg. No. 7161486, issued September 12, 2023 (the "Cited Mark" or the "Cited Registration").

[3] *See* 6 TTABVUE 4 (objecting to exhibits to 4 TTABVUE). References to the briefs on appeal refer to TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry.

consider the webpages for which Applicant only included hyperlinks in his brief.[4] Providing hyperlinks to Internet sources is insufficient to make those materials of record. *In re Weiss*, No. 88621608, 2024 TTAB LEXIS 277, at *3-4.

II. Likelihood of Confusion

"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 to deceive." *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the "*DuPont* factors"). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379-80 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence. *See Charger Ventures*, 64 F.4th at 1381 ("In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis.") (citation omitted). In determining likelihood of confusion, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) ("The fundamental

[4] *See* 4 TTABVUE 7, 15.

inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

A. Similarity or Dissimilarity of the Goods, Channels of Trade and Classes of Consumers

We begin by considering the second and third *DuPont* factors, "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration" and "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. We also consider the classes of consumers. Our determination of these factors is based not on evidence of use, but on the identification of services in the Application and the Cited Registration. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018).

The relatedness of goods may be established based on (1) the language of the involved identifications, which may show, on their face, that the goods are literally or legally identical, or otherwise intrinsically related, and (2) evidence of third-party uses or registrations, which may show that the identified goods are commonly offered by the same entity under the same mark. *See Country Oven*, 2019 TTAB LEXIS 381, at *6-7.

The "Examining Attorney need not prove, and we need not find, similarity as to each [good] listed in the description of [goods]" in an application. *In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *10 (citation omitted). "It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of goods in a particular class in an application." *In re Ye Mystic Krewe of Gasparilla*, No. 90522364, 2025 TTAB LEXIS 412, at *9 (citing

Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc., 648 F.2d 1335, 1336 (CCPA 1981)). "[R]egistration must be refused in a particular class if Applicant's mark for any of its identified goods . . . in that class is likely to cause confusion with the Registrant's mark for any of its identified goods . . . ." *In re Info. Builders Inc.*, No. 87753964, 2020 TTAB LEXIS 20, at *8.

The goods identified in the Application and the Cited Registration both include "candles" and "scented candles" and thus the goods are literally identical in-part. The goods are also legally identical because the Application includes goods that encompass, or are encompassed by, goods identified in the Cited Registration, such as Applicant's "scented soy candles," which are encompassed by the "soy candles" of the Cited Registration. *See In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 TTAB LEXIS 65, at *10 ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'"). Because the goods are literally and legally identical in-part, we need not consider the Examining Attorney's evidence of relatedness.

Applicant does not disagree that the goods are literally and legally identical in-part. Instead, Applicant faults the Examining Attorney because "[t]he record contains no evidence that the parties' goods are offered in overlapping trade channels" and argues that, unlike those of the Cited Registration, "Applicant's goods are marketed through boutique and specialty retail environments that emphasize artisanal quality, curated branding, and a premium consumer experience."[5] Even if either of these

[5] 4 TTABVUE 11.

statements were accurate, they would be irrelevant. Where, as here, the goods are literally and legally identical in-part and there are no restrictions in the Application and Cited Registration, the goods are presumed to travel in the same channels of trade to the same classes of purchasers. *See, e.g.*, *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (rejecting arguments that record lacked evidence of overlapping trade channels and consumers because where the goods are identical, the Board is entitled to rely on this legal presumption in determining likelihood of confusion); *accord Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018).

The factors of the similarity of the goods, channels of trade and classes of consumers strongly favor a likelihood of confusion.

B. Asserted Weakness of the Cited Mark

Before we compare the marks, we consider Applicant's argument that the word "OWL" in the Cited Mark is weak and entitled to a narrow scope of protection. Under the sixth *DuPont* factor, which considers the "number and nature of similar marks in use on similar goods," *DuPont*, 476 F.2d at 1361, there are two prongs of analysis for a mark's strength, conceptual strength and commercial strength. *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citation omitted). "Conceptual strength is a measure of a mark's distinctiveness . . . and distinctiveness is often classified in categories of generally increasing distinctiveness[:] . . . (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful." *Id.* (cleaned up). "Distinctiveness is relevant to a mark's overall strength in the likelihood of confusion analysis." *Id.* (citation omitted). "Commercial strength, on the other hand, is the marketplace recognition

value of the mark. [It] is a question of whether consumers in fact associate the . . . mark with a unique source[.]" *Id.* (cleaned up).

Although at times the arguments are conflated, Applicant appears to argue that the mark THE WHITE OWL CANDLE COMPANY is both conceptually weak and commercially weak, due to a crowded field of OWL-formative marks in the relevant marketplace.[6] Evidence of third-party use of a mark may reflect on conceptual and commercial strength. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015); *Tao Licensing, LLC v. Bender Consulting Ltd.*, No. 92057132, 2017 TTAB LEXIS 437, at *54 (citing *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373 (Fed. Cir. 2015)). *See also Cielo e Terra, S.p.A. v. Hoteles y Viñedos del Valle de Guadalupe S.A. de C.V.*, No. 91287216, 2026 TTAB LEXIS 240, at *33 n.31 (use evidence may be probative of conceptual weakness as well as commercial weakness).

The specific exhibits Applicant cites in support of this argument have been excluded, but we consider the evidence that Applicant provided during prosecution, namely, truncated screenshots from the following Internet sources:

- Etsy listing for a candle with the name "White Owl" sold by Woodland Wolf Shop, with an image of a candle with a drawing of an owl and the words "White Owl" on the label. The listing states "[t]his candle is inspired by the Harry Potter series."[7]

[6] *See* 4 TTABVUE 12-13, 16.

[7] August 29, 2025 Response to Office Action, TSDR 19.

None of the screenshots Applicant provided include the date of access and only some include a URL, both of which are required to properly make Internet evidence of record. *See, e.g., In re I-Coat Co.*, No. 86802467, 2018 TTAB LEXIS 171, at *7-9; *see also* TBMP § 1208.03; Trademark Manual of Examining Procedure (TMEP) § 710.01(b) (May 2026). The Examining

- Etsy listing for a "White Owl Premium 15oz Hand Poured Soy Candle" sold by CrispAndCozyCorner; image shows a white candle in an owl-shaped jar.[8]
- Etsy listing for a "Handmade White Owl-Shaped Candle" sold by GiftonSpace; image shows a white candle in the shape of an owl.[9]
- Instagram page for The White Owl Candle Co., asserted to be a different entity than the owner of the Cited Mark.[10]
- Website of Gray Owl Candle Co.[11]
- Website of Wicked Owl Candle Co.[12]

This evidence does not persuade us that the word OWL in the Cited Mark is either conceptually or commercially weak for the involved goods. The Cited Registration issued on the Principal Register without a requirement of a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), so "we presume it is inherently distinctive, i.e., that it is at worst suggestive of the goods." *Cielo e Terra*, 2026 TTAB LEXIS 240, at *18 (quoting *Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 TTAB LEXIS 494, at *49 (citing 15 U.S.C. § 1057(b)); *see also Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 146 (Fed. Cir. 2021) ("Where, as here, the mark is registered without a Section 2(f) claim of acquired distinctiveness, the mark is presumed to be inherently distinctive.") (citation omitted).

Attorney did not object to Applicant's screenshots, however, so we consider them for whatever probative value they may have. *See, e.g., I-Coat*, 2018 TTAB LEXIS 171, at *9.

[8] August 29, 2025 Response to Office Action, TSDR 19.

[9] *Id.* at 20.

[10] *Id.* at 18.

[11] *Id.* at 20.

[12] *Id.*

The first three uses comprising Etsy listings do not appear to reflect use of WHITE OWL as a trademark, but rather to refer to features of the goods. With regard to the Etsy listings and the other uses, Applicant has provided no evidence of the extent of consumer exposure to these websites, which is typically required to show commercial weakness, absent voluminous or extensive evidence of third-party use. *See Cielo e Terra*, 2026 TTAB LEXIS 240, at *41 (noting that in the context of third-party use of similar marks, "quantity has a quality all its own"). As compared to the cases Applicant cites where weakness was shown, this evidence is insufficient to show that OWL is conceptually or commercially weak for the involved goods. *See Jack Wolfskin*, 797 F.3d at 1373 ("voluminous evidence" of marks with paw print design elements); *Juice Generation*, 794 F.3d at 1339 (extensive evidence of third-party use and registration of similar marks). The sixth *DuPont* factor is neutral.

C. Similarity or Dissimilarity of the Marks

When considering the first *DuPont* factor, the similarity or dissimilarity of the marks, we compare the marks "in their entireties as to appearance, sound, connotation, and commercial impression." *Detroit Athletic*, 903 F.3d at 1302-03 (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 mem*., 777 F. App'x 516 (Fed. Cir. 2019). "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." *Fuente Mktg. v. Vaporous Techs., LLC*, 172 F.4th 1337, 1341-42 (Fed. Cir. 2026) (quoting *Coach Servs.,* 668 F.3d at 1368 (cleaned up)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of marks. *In re i.am.symbolic, llc*, No. 85916778, 2018 TTAB LEXIS 281, at *11 (citations 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)). 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 *In re Viterra, Inc.*, 671 F.3d 1358, 1363 (Fed. Cir. 2012) (citation omitted)); *see also Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.").

Because similarity is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components. *See, e.g.*, *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). "No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone." *In re Electrolyte Labs. Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990). Nonetheless, "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." *Detroit Athletic*, 903 F.3d at 1305 (quoting *Nat'l Data*, 753 F.2d at 1058).

1. Doctrine of Foreign Equivalents

The Examining Attorney argues that Applicant's mark HIBOU BLANC is French for "WHITE OWL," which is similar in meaning and connotation to the Cited Mark THE WHITE OWL CANDLE COMPANY. "Under the doctrine of foreign equivalents, foreign words used as a mark are translated into English and then tested for descriptiveness, geographic descriptiveness and mis-descriptiveness, genericness, and likelihood of confusion." *In re Vetements Grp. AG*, 137 F.4th 1317, 1325 (Fed. Cir. 2025), *cert. denied*, 146 S. Ct. 1485 (2026) (quoting 1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:34 (5th ed.) (cleaned up, emphasis omitted)). The doctrine of foreign equivalents "is not an absolute rule and should be viewed merely as a guideline." *Id.* (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2006)). "The doctrine should be applied only when it is likely that the ordinary American purchaser would 'stop and translate [the word] into its English equivalent,'" *id.* at 1324-25 (citation omitted), which is a "threshold limitation on the application of the doctrine of foreign equivalents." *Id.* at 1325 (quoting *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1349-50 (Fed. Cir. 2009) (citing *Palm Bay*, 396 F.3d at 1377) (internal quotation marks omitted)). For purposes of the doctrine of foreign equivalents, "the 'ordinary American purchaser' is not limited to only those consumers unfamiliar with non-English languages; rather, the term includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate

words into English." *Id.* at 1324 (quoting *Spirits Int'l*, 563 F.3d at 1352) (internal quotation marks omitted).

The Federal Circuit has held that "words from modern languages are generally translated into English," and "unless it is unlikely that the ordinary American purchaser would stop and translate the word into its English equivalent, the doctrine of foreign equivalents applies." *Vetements*, 137 F.4th at 1326 (citations omitted). Our caselaw has previously recognized French as a common, modern language. *See*, *e.g.*, *August Storck KG v. Florend Indústria e Comércio de Chocolates LTDA*, No. 91277224, 2025 TTAB LEXIS 502, at *18. In addition, the Examining Attorney provided evidence regarding the prevalence of French speakers in the U.S., including:

- A .pdf file from Census.gov released in June 2025 stating that 1,210,000 people in the United States age 5 and over speak French.[13]
- Screenshots from a Wikipedia.org entry titled "Languages of the United States" stating that French is among the languages spoken by over a million residents and is the seventh most-spoken language in the U.S. based on Census data.[14]

This evidence shows that French is a modern language that is spoken by many consumers in the United States.

[13] February 20, 2026 Denial of Request for Reconsideration, TSDR 79. The printout provided did not include the date of download or URL and portions are cut off. However, we take judicial notice that a table on the U.S. Census Bureau's website titled "Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2017-2021," released in June 2025, which appears to be the same as the table provided by the Examining Attorney, shows that for the period 2017-2021 there were 1,210,000 people in the United States age 5 and over who speak French at home. *See* https://www.census.gov/data/tables/time-series/demo/language-use/2017-2021-lang-tables.html (accessed October 28, 2026). *See August Storck*, 2025 TTAB LEXIS 502, at *18 n. 33 (taking judicial notice of U.S. census data and citing other cases doing the same).

[14] February 20, 2026 Denial of Request for Reconsideration, TSDR 53-54.

In considering whether the ordinary American purchaser would stop and translate HIBOU BLANC, we are also guided by the following nonexclusive principles. "First, the burden is on the party opposing translation to show that it is unlikely the ordinary American purchaser would stop and translate the word into its English equivalent." *Vetements*, 137 F.4th at 1331. Applicant's statement in his brief that "the burden rests with the Office to demonstrate that translation is likely among the relevant purchasing public"[15] is contrary to the teaching of *Vetements*.

Second, if an appreciable number of Americans from the U.S. population as a whole are capable of translating the mark, it likely will be translated. *Id*. In addition to the evidence set forth above about the number of French speakers in the U.S., the Examining Attorney provided the following evidence regarding the translation of the terms in Applicant's mark:

- Screenshots from Dictionary.Cambridge.org, CollinsDictionary.com and FrenchDictionary.com[16] showing the English translation of "HIBOU BLANC" as "WHITE OWL."

[15] 4 TTABVUE 4.

[16] February 20, 2026 Denial of Request for Reconsideration, TSDR 105, 112-13, 118. Each of these references states "Translated by Microsoft" and/or "Translated by Promt," which appear to indicate use of machine translation tools. *See id*. During prosecution Applicant stated that "reliance on general-purpose machine translation tools, without consideration of nuanced meaning and consumer perception, is legally insufficient to establish equivalence," December 31, 2025 Request for Reconsideration, TSDR 1, but on appeal Applicant does not maintain this argument or otherwise challenge the Examining Attorney's translation evidence, and the argument is waived. *See In re Princeton Equity Grp. LLC*, No. 97399712, 2025 TTAB LEXIS 242, at *6 (citing TBMP § 1203.02(g) ("If an applicant, in its appeal brief, does not assert an argument made during prosecution, it may be deemed waived by the Board.")).

- Screenshot from Deepl.com showing the English translation of "HIBOU BLANC" as "WHITE OWL."[17]

- Screenshot from Translate.Google.com showing the English translation of "HIBOU BLANC" as "WHITE OWL."[18]

- Screenshot from Translate.com showing the English translation of "HIBOU BLANC" as "WHITE OWL."[19]

- Screenshot from Access.InfoBase.com showing the English translations of "HIBOU" as "OWL" and "BLANC" as "WHITE."[20]

- Screenshot from OxfordReference.com showing the English translations of "HIBOU" as "OWL" and "BLANC" as "WHITE."[21]

- Screenshot from OED.com showing historical and current usage of the word "OWL."[22]

- Copies of U.S. Registration Nos. 5019751, 4842054, 4144226 and 6021453 with translation statements stating that the English translation of "HIBOU" is "OWL."[23]

This evidence supports a finding that HIBOU BLANC is likely to be translated as WHITE OWL in English. The multiple definitions provided by the Examining Attorney indicate that the relevant English translation is literal and direct. When considered with the evidence of the number of persons in the United States who speak French, we find that an appreciable number of U.S. consumers would know that

[17] February 20, 2026 Denial of Request for Reconsideration, TSDR 121-29 (providing alternatives "barn owl" and "snowy owl").

[18] *Id.* at 130.

[19] *Id.* at 131.

[20] *Id.* at 109-11 (attributing translations to COLLINS FRENCH DICTIONARY & GRAMMAR, 2014).

[21] *Id.* at 115-17 (attributing translations to POCKET OXFORD-HACHETTE FRENCH DICTIONARY: FRENCH-ENGLISH (4th ed.)).

[22] *Id.* at 137-43.

[23] *Id.* at 9-16.

HIBOU BLANC translates to WHITE OWL in English, weighing in favor of translating the mark for purposes of assessing likelihood of confusion. *See Vetements*, 137 F.4th at 1331 (when "an appreciable number of purchasers" are likely to be aware what the foreign word means in English, this weighs in favor of translation). Applicant disputes that there are sufficient French speakers in the United States who would translate the mark, stating that it is, "at most, a small fraction of an already limited population segment—and therefore not a substantial portion of the relevant public."[24] In support, Applicant states that the Census Bureau figure of approximately 1.2 million people in the U.S. who report speaking French at home represents "well under one percent of the U.S. population" and "an upper bound of potential translators."[25] This figure actually represents a lower bound, because it does not include those who are able to speak French but do not do so at home. Under applicable caselaw, the evidence supports a finding that French is a modern language spoken by sufficient Americans such that an appreciable number of consumers are capable of translating Applicant's mark. *See Vetements*, 137 F.4th at 1327.

Finally, we consider whether a U.S. purchaser with ordinary sensibilities who speaks the foreign language would translate the mark, or would be unlikely to translate it, given the context in which the mark is used. Applicant makes several arguments against translation.

[24] 4 TTABVUE 7 (emphasis omitted).

[25] *Id.* at 6-7 (emphasis omitted).

Applicant first argues that HIBOU "is not a common English loanword, is absent from standard English usage, and is unlikely to be recognized or translated by ordinary purchasers" and, as a result, "consumers will perceive HIBOU BLANC as a foreign-language brand name, not as the literal equivalent of 'white owl.'"[26] As noted by the Examining Attorney, this argument misinterprets the proper application of the doctrine of foreign equivalents, because the threshold inquiry is not whether the non-English wording is common or present in English as a "loanword," but rather whether an ordinary American purchaser would stop and translate it. Indeed, if the word is commonly known in English, there is generally no need to translate it. *Cf.* TMEP § 809.01(b)(i) ("It is generally unnecessary to provide a translation of a foreign term if the term appears in an English dictionary (e.g., croissant, fiesta or flambé).").

Applicant next argues that translation is unlikely in the context of its goods, which are "boutique or premium candles" where the "presentation of HIBOU BLANC—as a concise French phrase with stylized packaging and a design-forward aesthetic—reinforces its perception as a foreign brand name rather than an English phrase requiring translation."[27] We are not persuaded that the context renders it unlikely

[26] *Id.* at 3 (citing Exhibits 1-6 to Applicant's brief). These exhibits have been stricken, but we note that during prosecution Applicant provided similar evidence including printouts of searches on the websites of English-language dictionaries showing no entries for HIBOU. *See, e.g.*, December 31, 2025 Request for Reconsideration, TSDR 50 (dictionary.cambridge.org), 51 (merriam-webster.com), 52 (oed.com).

[27] 4 TTABVUE 5 (citing *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108); 7 (suggesting that Applicant's goods fall within "the premium or luxury segment"). Applicant does not include a pinpoint citation to the *Aquitaine* case, 4 TTABVUE 5, and we do not find support for Applicant's argument in that decision, which considered arguments about consumers' understanding of rules of appellation for French wines. *See Aquitaine*, 2018 TTAB LEXIS 108, at *23.

that the consumer with ordinary sensibilities would translate HIBOU BLANC. Nothing in Applicant's identification or the nature of the goods limits them to "boutique or premium" markets and the record shows the involved goods offered through normal channels of trade such as the websites and stores of candle manufacturers who offer the goods at relatively low prices, indicating that they are not premium or luxury goods.[28] Nor does the use of a "concise French phrase" mean that consumers with ordinary sensibilities would not translate the mark. We do not find that the cases cited by Applicant support its position. *In In re Universal Package Corp*., 1984 TTAB LEXIS 136, the Board found that the mark LE CASE for jewelry boxes created a different impression from "the case" such that the mark was not merely descriptive because the French article LE "imparts to the mark a French flavor, a continental connotation which is presumably desirable from the perspective of manufacturers of jewelry boxes." *Id*. at *9. However, the Board specifically distinguished a mark in which only one of the two words is foreign from a mark, like the one before us, consisting entirely of foreign words, stating that "[t]ranslation of an entire compound word mark is more likely to take place in the marketplace than is the translation of only part of the mark." *Id*. at *9-10. The other case Applicant cites, *In re Yale Sportswear Corp.*, No. 78653373, 2008 TTAB LEXIS 34, appears to be completely inapposite, as it did not involve French words at all but an application to register the mark UPPER 90.

[28] *See* Final Office Action, TSDR 80-94 (printout from yankeecandle.com); 96-106 (printout from goosecreekcandle.com); 108-27 (printout from colonialcandle.com); 128-35 (printout from mltdcandlecompany.com); 136-52 (printout from happywax.com).

It is certainly not the case that marks comprising French words are never translated simply because they may convey a European connotation. *See, e.g.*, *Vetements*, 137 F.4th at 1330 (affirming application of doctrine of foreign equivalents to VETEMENTS, the French word for clothing); *In re Thomas*, No. 78334625, 2006 TTAB LEXIS 135, at *9-10, 14 (finding that the ordinary American purchaser would stop and translate MARCHE NOIR where the evidence showed it was the exact French equivalent of "black market," French was "a common foreign language spoken by an appreciable segment of the population," and, when considered in relation to the goods and services, the mark suggested contraband or illicit goods).

To the extent Applicant seeks to align this case with *Palm Bay*, which declined to translate VEUVE ROYALE in considering confusing similarity to the opposer's mark THE WIDOW because "it [was] improbable that the average American purchaser would stop and translate 'VEUVE' into 'widow,'" 396 F.3d at 1377, we find this case to be distinguishable from *Palm Bay*. The evidence here supports a finding that an appreciable number of Americans are capable of translating the wording HIBOU BLANC into WHITE OWL in English. Contrary to Applicant's suggestion, there is no evidence that the words in his mark are "obscure or not widely recognized" or that they would be considered "as a distinctive foreign expression rather than as a translatable phrase."[29]

Nor do the other cases cited by Applicant counsel against translation in this case. In *In re Tia Maria, Inc.*, 1975 TTAB LEXIS 130, at *3-4, the Board held that

[29] 4 TTABVUE 5.

consumers would not translate TIA MARIA to "Aunt Mary" for restaurant services because a person dining at the TIA MARIA restaurant surrounded by its Mexican décor and Mexican food would be likely to accept the Spanish-language mark "TIA MARIA" as is and not translate it. Such circumstances are not present here. Applicant also cites *In re La Peregrina Ltd.*, No. 78676199, 2008 TTAB LEXIS 38, at *9 (2008), but there the Board found that the ordinary American purchaser would stop and translate LA PEREGRINA because the evidence showed that the exact English translation was "the pilgrim," Spanish was a common, modern language, and there was no persuasive evidence that translation was inappropriate.

As discussed above, the record contains evidence that HIBOU BLANC translates directly and literally to WHITE OWL, and that OWL is a known word in English. There is no evidence that this mark is so unusual for the goods that it would not be translated.[30] *Cf. Vetements*, 137 F.4th at 1327 (distinguishing *Palm Bay* because "vetements" "is a simple and common word—the word for clothing" as opposed to "veuve," the word for "widow," which "requires a more advanced vocabulary").

Finally, Applicant argues that the Examining Attorney misapplied the doctrine of foreign equivalents, treating it as a mandatory rule instead of a guideline that should not apply where, as Applicant asserts is the case here, "there is no single, clear, and uncontested English equivalent" for the foreign term.[31] Applicant states that "the

[30] The evidence of other candle brands in the record indicates that nature and the woods are common themes in product names. *See, e.g.,* Final Office Action, TSDR 83, 89 ("Seaside Woods" and "Moonlit Woods"), 97-98 ("Sunlit Forest" and "Cold Autumn Leaves"), 111 ("Winter Woods"), 129 ("Autumn Leaves"), 133 ("Cozy Cabin" and "Campfire").

[31] 4 TTABVUE 4-5 (citing TMEP § 1207.01(b)(vi)(B)).

record reflects linguistic nuance and competing shades of meaning, undermining any claim of a direct and exact translation."[32] Yet Applicant points to no evidence supporting a meaning other than the literal one provided by the Examining Attorney, which is the meaning Applicant provided in his translation statement. *Cf. In re Tokutake Indus. Co.*, No. 79018656, 2008 TTAB LEXIS 26, at *12 (affirming descriptiveness refusal where applicant "provided no admissible evidence to explain why Japanese speakers would not translate its mark as it originally specified" in the applicant's translation statement).

To the extent Applicant is alluding to arguments he made during prosecution that HIBOU BLANC should be translated to "white horned owl,"[33] we are not persuaded. Applicant's brief cites no evidence of an alternative meaning, and assertions of fact in Applicant's brief are not evidence. *Cai*, 901 F.3d at 1371. Arguments Applicant made during prosecution which are not raised on appeal have been waived or forfeited. *See In re Audemars Piguet Holding SA*, No. 90045780, 2025 TTAB LEXIS

[32] 4 TTABVUE 5.

[33] During prosecution, Applicant provided definitions ostensibly from French dictionaries and Internet sources indicating that in French "'hibou' does not simply mean 'owl'—it means 'horned owl.'" August 29, 2025 Response to Office Action, TSDR 10-11. But Applicant did not attach copies or printouts from any of these sources and thus failed to make them of record. In requesting reconsideration, Applicant provided an "authenticated professional translation" to similar effect. *See* December 31, 2025 Request for Reconsideration, TSDR 1, 10-12. That document was signed only by a representative of the translation service, not by the named translator himself. *See id.* at 10-12. In any event, Applicant does not mention any such evidence in his appeal brief.

Nor do we consider the alternative meanings of HIBOU as "barn owl" or "snowy owl" in the DeepL translation provided by the Examining Attorney to render translation inappropriate. The first meaning in that reference is "owl," which is consistent with all of the other evidence provided by the Examining Attorney. Taken as a whole, the evidence supports a conclusion that the literal, direct meaning of HIBOU in English is "owl."

1, at *41; *see also* TBMP § 1203.02(g) ("If an applicant, in its appeal brief, does not assert an argument made during prosecution, it may be deemed waived by the Board."). To the extent Applicant's nonspecific reference to "the record" seeks to incorporate by reference arguments made during prosecution, "incorporation-by-reference statements are inadequate to present on appeal whatever arguments an applicant may thereby be contemplating . . . ." *Princeton Equity Grp.*, 2025 TTAB LEXIS 242, at *8-9.

We find that the record here supports translation of HIBOU BLANC as WHITE OWL in English for purposes of considering likelihood of confusion and Applicant has not met his burden to show that the mark should not be translated.

2. Comparison of the Marks

With these principles in mind, we compare Applicant's mark, HIBOU BLANC, with the Cited Mark, THE WHITE OWL CANDLE COMPANY. The Examining Attorney argues that the marks are confusingly similar because their dominant wording, HIBOU BLANC and WHITE OWL, has the same meaning when Applicant's mark is translated and the marks therefore convey the same commercial impression.[34] Applicant argues that the Examining Attorney improperly dissected the Cited Mark by focusing on WHITE OWL to the exclusion of the other words.[35] When considered in their entireties, Applicant contends, the marks engender different commercial impressions, with the Cited Mark imparting a "longer, more

[34] 6 TTABVUE 16-17.

[35] 4 TTABVUE 9-10.

descriptive, and business-oriented commercial impression" in contrast to Applicant's shorter, foreign-language mark which differs in appearance, sound and meaning.[36]

We acknowledge, as pointed out by Applicant, that the marks differ phonetically and visually due to differences in length, wording and overall structure. But that is not the end of the inquiry. We have found that the ordinary American consumer is likely to translate HIBOU BLANC to WHITE OWL, which we find is dominant in the mark THE WHITE OWL CANDLE COMPANY. In that mark, the definite article THE plays a subordinate role and merely modifies WHITE OWL CANDLE COMPANY. *See, e.g., In re Thor Tech, Inc.*, No. 78634024, 2009 TTAB LEXIS 253, at *3 (WAVE and THE WAVE are virtually identical because "[t]he addition of the word 'The' at the beginning of the registered mark does not have any trademark significance."). Candles are among the goods identified in the Cited Registration, and the words CANDLE COMPANY have been disclaimed. Although disclaimed matter is not removed from consideration when comparing the marks in their entireties, certain elements of marks may play a less important role in distinguishing them from others and disclaimers of merely descriptive terms "constitute rational reasons for giving those terms less weight in the analysis." *Detroit Athletic*, 903 F.3d at 1305 (Board properly gave less weight to disclaimed words "Co." and "Club"); *see also In re Dixie Rests.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (finding DELTA was the dominant part of the mark THE DELTA CAFE, in part because the generic word CAFE was disclaimed). In the context of the Cited Mark, THE and CANDLE COMPANY are

[36] *Id.* at 9-10.

likely to be perceived as an entity designation and are of less source-indicating significance than WHITE OWL.

Given the use of dominant terms that have the same meaning, we believe the ordinary consumer who retains a general rather than specific impression of the Cited Mark for candles and who separately encounters and translates HIBOU BLANC for candles to WHITE OWL is likely to believe there is a connection between the sources of the goods. Even those consumers who perceive CANDLE COMPANY as "reinforc[ing] the perception of the mark as a business name rather than a standalone brand"[37] could mistakenly believe that Applicant's mark is a variant or sub-brand offered by the owner of the Cited Mark.

Comparing the marks in their entireties in view of the applicable legal principles, including that a lesser degree of similarity of the marks is needed for confusion to be likely when the goods are literally or legally identical, we find that the marks are similar in connotation and overall commercial impression and the first *DuPont* factor favors a likelihood of confusion. *See In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, at *15 ("[E]ven when there are differences in the sound and appearance of two marks, likelihood of confusion can be found when the equivalency in meaning or connotation outweighs the differences in the marks.").[38]

[37] 4 TTABVUE 9-10.

[38] Applicant also points to asserted differences in "branding," "packaging" and "marketplace presentation," *id.* at 11, but it is well settled that we must compare the marks as they appear in the drawings in the application and Cited Registration, not as they appear in extrinsic marketplace uses. *Fuente Mktg.*, 172 F.4th at 1343 ("The correct inquiry requires comparison only of the applied-for mark . . . to [the] registered . . . mark[ ]."); *see also, e.g., Aquitaine Wine*, 2018 TTAB LEXIS 108, at *11.

D. Sophistication of Consumers and Care in Purchasing

Applicant asserts that "[t]he relevant consumers—purchasers of artisanal or premium candles—are more likely to exercise care in their purchasing decisions and to evaluate branding elements such as wording, typography, packaging, and overall aesthetic" to distinguish among brands, and "are unlikely to assume a common source based on superficial or partial similarities."[39] *See DuPont*, 476 F.2d at 1361 (fourth factor considers the "conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing"). Applicant cites no evidence in support of this argument. Contrary to Applicant's argument, nothing in the Application or the Cited Registration limits the goods to "artisanal or premium" candles. Where, as here, there are no limitations in the identification, the goods are presumed to include "all goods of the type identified, without limitation as to their nature or price." *Sock It To Me, Inc. v. Fan*, No. 91230554, 2020 TTAB LEXIS 201, at *24-25. And the record shows that the involved goods can be offered at a variety of prices, with a number of offerings priced at $15 and under.[40]

On the record of this case, we find that the fourth *DuPont* factor is neutral.

E. Other Arguments

Applicant argues that the record does not contain evidence demonstrating commercial strength of the Cited Mark, which should be accorded a correspondingly

[39] 4 TTABVUE 4.

[40] *See* Final Office Action, TSDR 81-83 (wax melts offered on yankeecandle.com); 96-106 (candles and wax melts offered on goosecreekcandle.com); 108-27 (candles and wax melts offered on colonialcandle.com); 132-35 (candles offered on mltdcandlecompany.com).

limited scope of protection.[41] The fifth *DuPont* factor considers the "fame [or strength] of the prior mark." *DuPont*, 476 F.2d at 1361. Because the owner of the Cited Registration is not a party to this ex parte appeal, it is not surprising that there is no evidence of the strength of its mark. Indeed, "it is settled that the absence of such evidence is not particularly significant in the context of an ex parte proceeding." *In re Davey Prods. Pty Ltd.*, No. 77029776, 2009 TTAB LEXIS 524, at *21 (citing *Thomas*, 2006 TTAB LEXIS 135, at *18 n.11). *See also In re Mr. Recipe, LLC*, No. 86040643, 2016 TTAB LEXIS 80, at *4 ("Because of the nature of the evidence required to establish the fame of a registered mark, the Board does not expect Trademark Examining Attorneys to submit evidence as to the fame of the cited mark in an *ex parte* proceeding, and they do not usually do so."). We therefore treat the fifth *DuPont* factor as neutral.

Applicant also contends that the absence of evidence of actual confusion indicates that confusion is not likely.[42] The eighth *DuPont* factor considers the "length of time during and conditions under which there has been concurrent use without evidence of actual confusion." *DuPont*, 476 F.2d at 1361. This factor often has limited applicability in an ex parte proceeding unless the applicant provides contextual evidence that would permit a meaningful assessment of whether there was an opportunity for confusion to have occurred if it were likely. *See, e.g., In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *53; *see also In re Guild Mortg. Co.*, No.

[41] 4 TTABVUE 13.

[42] *Id.* at 14.

86709944, 2020 TTAB LEXIS 17, at *19, 23 (unlike the second, third and fourth *DuPont* factors, eighth factor considers evidence of actual marketplace conditions, if of record, but because prior registrant is not a party in an ex parte appeal, the Board is "getting only half the story"). Applicant has provided no such evidence. Accordingly, the eighth *DuPont* factor is neutral.

We have considered all of Applicant's arguments, but do not find that any factors weigh against a likelihood of confusion in this case.

III. Summary of the *DuPont* Factors

The goods are literally and legally identical in-part, and the channels of trade and classes of consumers overlap, with the second and third *DuPont* factors weighing strongly in favor of a likelihood of confusion. The ordinary American consumer would stop and translate Applicant's mark HIBOU BLANC to WHITE OWL, rendering HIBOU BLANC and THE WHITE OWL CANDLE COMPANY similar in connotation and commercial impression, with the first *DuPont* factor also weighing in favor of a likelihood of confusion. The fourth, fifth, sixth and eighth *DuPont* factors are neutral. No *DuPont* factors weigh against a likelihood of confusion.

We conclude that confusion is likely between Applicant's mark HIBOU BLANC and Registrant's mark THE WHITE OWL CANDLE COMPANY for their respective identified and identical goods.

Decision:

The refusal to register Applicant's mark under Trademark Act Section 2(d) is affirmed.