This Opinion Is Not a Precedent of the TTAB

Mailed: October 16, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ATMAX Equipment Co.

Serial No. 98192874

Anton J. Hopen, of Smith & Hopen, P.A., for Atmax Equipment Co.

Megan Aurand, Trademark Examining Attorney, Law Office 128,
Colleen Cassidy, Managing Attorney.

Before Wellington, Thurmon and Stanley, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

ATMAX Equipment Co. ("Applicant") seeks registration on the Principal Register of the mark VERSAMAX, in standard characters, for "Tractors, namely, industrial, multifunction hydraulic prime movers for vegetation management, snow removal, street sweeping and asphalt repair," in International Class 12.[1] The Trademark

[1] Application Serial No. 98192874 was filed on September 22, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce.

Citations to briefs 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. *See Turdin v. Trilobite, Ltd.,* 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system.

Examining Attorney issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion, based on four registered marks that include the term VERSAMAXX alone or with other elements, all for "Trailers; Cargo trailers; Flatbed trailers; Lowbed trailers; Dump trailers; Tractor trailers; Equipment trailers; Bulk hauling trailers; Gooseneck trailers; Heavy haul transport carrier vehicles in the nature of trailers for transporting land vehicles, namely, lowboys, drop decks, double drop decks, flat decks and tag trailers," in International Class 12.[2]

The appeal is briefed and ready for final decision. We reverse the refusal to register. We limit our analysis to the cited registration of the standard character mark VERSAMAXX (hereafter, the "Cited Registration" or "Cited Mark") vis-à-vis Applicant's mark.[3] If we find no likelihood of confusion between Applicant's mark and the Cited Mark, we would not find confusion likely based on the other cited registrations that cover the same or less similar marks and the same or less related goods. *In re Max Cap. Grp. Ltd.*, (Ser. No. 77186166) 2010 TTAB LEXIS 1, *4-5 (confining Section 2(d) analysis to most similar cited mark).

I. Section 2(d) – Applicable Law

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*"), *cited in B&B*

[2] Registration Nos. 7485737, 7485738, 7485739 and 7485740. The four cited registrations are owned by a single entity, Heil Trailer International, LLC.

[3] Registration No. 7485737.

Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. *See, e.g.*, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). "Whether a likelihood of confusion exists between an applicant's mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors." *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1318 (Fed. Cir. 2018). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods or services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993).

"Each case must be decided on its own facts and the differences are often subtle ones." *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011); *Shell Oil*, 992 F.2d at 1206 ("the various evidentiary factors may play more or less weighty roles in any particular determination"). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103

(CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

II. Likelihood of Confusion – Analysis

Applicant and the Trademark Examining Attorney presented arguments under *DuPont* factors one, two, three, four, and six. We address these factors in turn below.

A. Similarity of the Marks

To evaluate the similarity of the marks under the first *DuPont* factor, we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *See, e.g.*, *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (citing *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*, (Ser. No. 87075988), 2018 TTAB LEXIS 170, *13 (quoting *In re Davia*, (Ser. No. 85497617) 2014 TTAB LEXIS 214, *4, *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

"The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *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."[4] *In re i.am.symbolic, llc*, (Ser. No. 85916778) 2018 TTAB LEXIS 281, *11.

Applicant's mark and the Cited Mark are almost identical, with the only difference being an extra X at the end of the Cited Mark. In terms of sound, we find the marks are effectively identical. The marks are very similar in appearance, and many consumers may not remember that the Cited Mark has two Xs at the end when they see Applicant's mark in another setting. It is often observed that the first element of a mark tends to play a dominant role in the mark's commercial impression. *See In re Detroit Athletic Co.*, 903 F.3d at 1303 (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"); *Palm Bay Imps.*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, (Pro. No. 74797) 1988 TTAB LEXIS 60, *8 ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). In the context of this appeal, consumers' tendency to focus on and recall the first part of a trademark means the extra "X" at the end of the Cited Mark has little impact on the overall visual similarity of the marks.

There is no evidence of any specific meaning for either mark, and we find the use of two Xs in the Cited Mark does not alter the meaning of the term "VERSAMAX." There is also a lack of evidence concerning the commercial impression these marks

[4] Applicant did not address the first *DuPont* factor in its brief, thereby impliedly conceding the issue. *See In re Morinaga Nyugyo K. K.*, (Ser. No. 86338392) 2016 TTAB LEXIS 448, *3 (Board considered Applicant to have conceded the issues of similarity of the goods and channels of trade by not addressing the issues).

are likely to create, but we can see no reason to conclude that such impressions would differ. In short, the marks are extremely similar.

Because the marks are so similar, this factor weighs heavily in our likelihood of confusion analysis.

B. Similarity or Relatedness of the Goods

We evaluate the second *DuPont* factor based on the goods identified in the Application and the Cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323(Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any goods or services identified in a particular class in an application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*, (Pro. No. 92063808) 2019 TTAB LEXIS 347, *18; *In re Aquamar, Inc.*, (Ser. No. 85861533) 2015 TTAB LEXIS 178, *9 n.5. In addition, the goods need only be sufficiently related that a relevant consumer would be likely to assume, upon encountering goods marketed under the marks at issue, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, (Pro. No. 91158891) 2007 TTAB LEXIS 50, *25-26.

The Cited Registration identifies "trailers." Though the identification also includes some specific types of trailers, it also recites "trailers" without any limitations. We, therefore, must consider any and all types of trailers as being within

the scope of the Cited Registration. A trailer is "a nonautomotive vehicle designed to be hauled by road: such as, a vehicle for transporting something."[5]

The Application identifies "Tractors, namely, industrial, multifunction hydraulic prime movers for vegetation management, snow removal, street sweeping and asphalt repair." When filed, the Application identified "tractors" with no limitations. The Trademark Examining Attorney suspended the Application because of four pending applications (i.e., these were the applications that led to the four cited registrations noted above).[6] No evidence other than the pending applications was provided.

Applicant responded to the Suspension by amending the identification of goods to the present version shown above, which Applicant argued eliminated any likelihood of confusion that may have existed based on the broader identification of "tractors."[7] This led to a second Suspension Letter, this time with evidence of John Deere agricultural tractors and John Deere trailers sold as part of a package. Part of this evidence is reproduced below.[8]

[5] https://www.merriam-webster.com/dictionary/trailer. We routinely take notice of the dictionary definitions. *See, e.g.*, *Hancock v. Am. Steel & Wire Co.*, 203 F.2d 737, 740 (CCPA 1953) (a tribunal "may always refer to standard dictionaries or other recognized authorities to refresh its memory and understanding as to the common meaning of language") (citations omitted).

[6] Suspension Letter dated May 16, 2024.

[7] Response to Suspension Letter dated May 21, 2024, at 3-4.

[8] Suspension Letter dated June 3, 2024, at 3.

Applicant again responded to the suspension, this time submitting evidence and arguments.[9] Applicant made three arguments, and has since continued to advance essentially the same arguments. First, Applicant argues that the John Deere product line is quite broad and that relevant consumers are not likely to assume other manufacturers offer the same range of goods under a single mark.[10] To support this argument, Applicant provided evidence of a wide range of John Deere products, ranging from lawn tractors (riding lawn mowers with front-mounted engines) to agricultural tractors to heavy industrial equipment of the kind often seen at construction sites.[11]

Applicant's second argument is based on our precedential decision in *In re Thor Tech, Inc.*, (Ser. No. 85667188) 2015 TTAB LEXIS 18, where we found goods bearing identical marks were not likely to cause confusion because the goods were not related in a relevant way. The applicant, Thor Tech, Inc., sought registration of the mark TERRAIN for "recreational vehicles, namely towable trailers," in International Class 12. The Office had refused registration based on the registered

[9] Response to Suspension Letter dated July 5, 2024.

[10] *Id.* at 20-21.

[11] *Id.* at 29-125.

mark TERRAIN for "motor land vehicles, namely, trucks," also in International Class 12. Applicant argues that the reasoning relied upon in *Thor Tech* is applicable here. For this reason, we take a closer look at the *Thor Tech* decision.

At the outset, it is clear that the goods involved in *Thor Tech* were related in a practical sense. Indeed, the goods were complementary, because towable RV trailers must be towed by a powered vehicle and that vehicle is often a truck. *Thor Tech* at *12-13. This connection between the goods at issue in *Thor Tech* was not disputed, but the applicant argued that despite the complementary nature of the goods, there was no evidence that these goods are often sold under a single mark. In addition, applicant presented evidence of about fifty third-party registrations of the same, or similar, marks registered by different entities for trucks, on one hand, and for towable RV trailers on the other hand. *Id.* at *8-11.

The Board placed weight on the third-party registration evidence, explaining that the evidence "suggests to us that businesses in these two industries believe that their respective goods are distinct enough that confusion between even identical marks is unlikely." *Id.* at *10-11. Applicant in the present appeal submitted evidence of third-party registrations for identical or similar marks owned by different entities for tractors and trailers.[12] While this evidence is less voluminous than that submitted in *Thor Tech*, and some of the registrations submitted by Applicant involve marks or goods that are too different to be probative, this evidence provides some support for Applicant's arguments.

[12] Response to Office Action dated July 5, 2024, at 254-279.

The third argument Applicant advances is that the evidence relied upon by the Trademark Examining Attorney does not involve "industrial, multifunction hydraulic prime movers." To support this argument, Applicant submitted eight lines of equipment that it considered to be within the scope of the identification in the Application.[13] According to Applicant, none of these eight equipment lines included a trailer.

The Trademark Examining Attorney next issued a non-final Office Action, as the pending applications matured into the cited registrations identified above.[14] The Trademark Examining Attorney argued that where the marks are identical, less similarity in the goods is needed.[15] The Trademark Examining Attorney also relied upon evidence of four tractor brands that also sell trailers, showing that some tractors and trailers are sold under a single mark.[16] Those brands were John Deere, RK Tractors, Kubota, and Apple Farm Service Inc. Relevant images of some of the John Deere, RK Tractors, and Kubota tractors are provided below:

John Deere:[17]

[13] Response to Suspension Letter dated July 5, 2024, at 22-23 (arguments), 138-93 (evidence).

[14] Office Action dated December 30, 2024.

[15] *Id.* at 5.

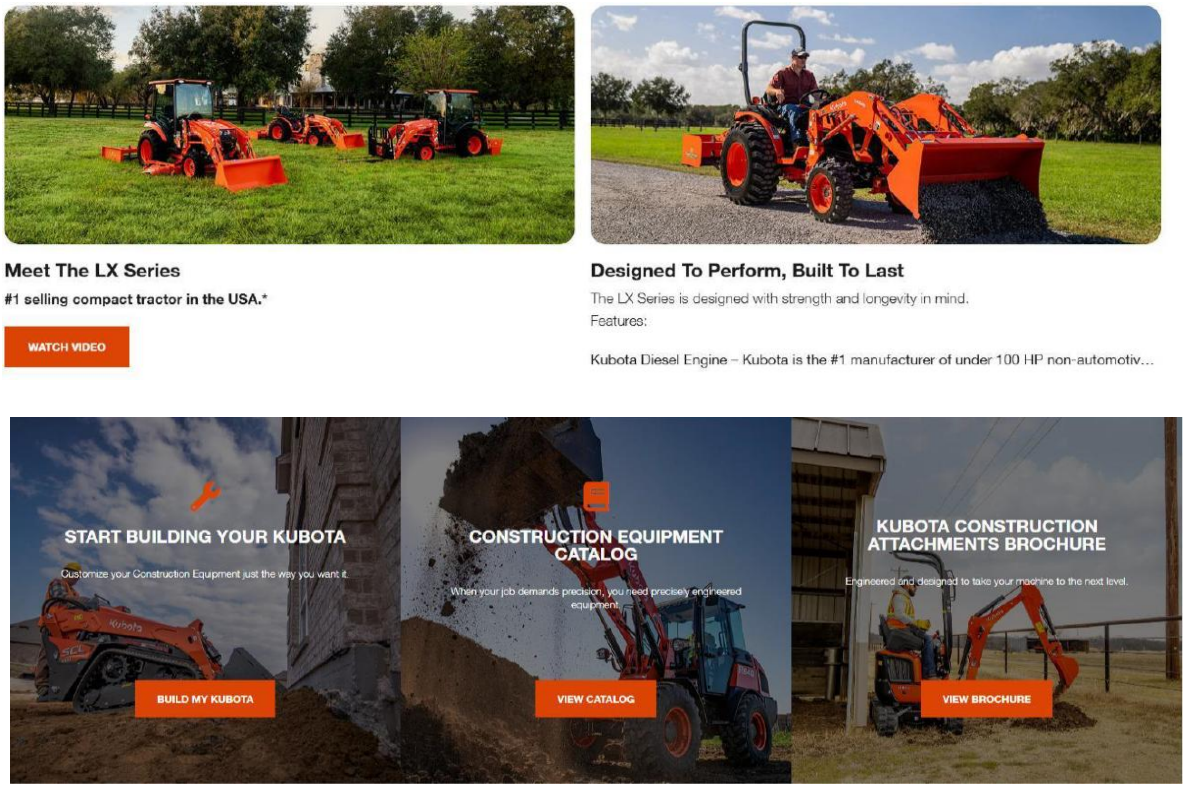
[16] *Id.* at 5 (argument), 16-80 (evidence).

[17] *Id.* at 17.

RK Tractors:[18]

[18] *Id.* at 40.

Kubota:[19]



The positions taken by Applicant in its responses to the Suspension Letters and that taken by the Trademark Examining Attorney in the first Office Action are essentially the same positions taken through the remainder of the prosecution and in this appeal.

We begin with Applicant's third-party paired registrations evidence. While this evidence falls short of the record presented in the *Thor Tech* case, it does show a few instances of the same, or a similar, mark being registered by different entities for tractors and trailers. There is merit to this argument, though it is insufficient,

[19] *Id.* at 58, 66.

standing alone, to support a conclusion that the goods at issue here are not related in a relevant manner.

This leads us to a central point in this appeal. What constitutes a relevant relationship between the goods? Our decision in *Thor Tech* makes it clear that complementary goods are not always related in a way that increases the likelihood of confusion. What matters is whether the relevant consumers of the goods are accustomed to seeing both types of goods sold under a single mark. When the evidence shows that the goods are often or commonly sold under a single mark—and this evidence can come from third-party registrations or from marketplace evidence—it follows that relevant consumers will assume a connection between parties selling such goods under the same or similar marks. But the opposite is equally true. When the evidence shows that most producers of the goods do not sell both types of goods under a single mark, relevant consumers will have no reason to assume a connection, even when identical marks are used. This teaching was a central point of our *Thor Tech* decision.

There is a second key point from *Thor Tech*. We must remain focused on the goods as identified in the application. In *Thor Tech*, the Trademark Examining Attorney relied on evidence "of seven third-party registrations of marks for goods including both 'trucks' and 'trailers' as evidence that trucks and trailers may emanate from the same source." *Thor Tech*, 2015 TTAB LEXIS 18, *5. The Board noted, however, that the application did not identify "trailers" without limitation, but instead identified towable RV trailers. Because five of the seven registrations identified by the

Trademark Examining Attorney did not cover towable RV trailers, the Board held that these five registrations "have no probative value in this case …." *Id.* at *5-6.

We believe this aspect of our *Thor Tech* precedent is important in this appeal. The Trademark Examining Attorney did not ask for more information about what the identified goods are and never limited her analysis to such goods. Throughout the prosecution and during this appeal, the Trademark Examining Attorney has relied on evidence of tractors, that is, of any kind of tractor.[20] That was error, given that *Thor Tech* teaches the evidence must match the specific goods identified in the Application.

What are the goods identified in the Application? It is not immediately clear to us what "industrial multifunction hydraulic prime movers" are. The identification lists four functions of such goods, but we must look primarily to this key phrase that identifies the actual goods. We found no dictionary definitions of this full phrase, but we did find the following:

- Industrial – "of or relating to industry," and "heavy-duty";[21]
- Multifunction – "performing or capable of performing more than one function";[22]

[20] The Trademark Examining Attorney did identify a line of heavy-duty tractors designed to tow trailers, where both are sold under a single mark. Final Office Action dated February 10, 2025, at 7 (A&G Mercury tractors and trailers). But in the same Office Action, the Trademark Examining Attorney stated "the goods of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers …", which is incorrect given Applicant's amended identification. *Id.*

[21] https://www.merriam-webster.com/dictionary/industrial.

[22] https://www.merriam-webster.com/dictionary/multifunction.

- Hydraulic – "operated by the resistance offered or the pressure transmitted when a quantity of liquid (such as water or oil) is forced through a comparatively small orifice or through a tube";[23]

- Prime mover – "an initial source of motive power (such as a windmill, waterwheel, turbine, or internal combustion engine) designed to receive and modify force and motion as supplied by some natural source and apply them to drive machinery."[24]

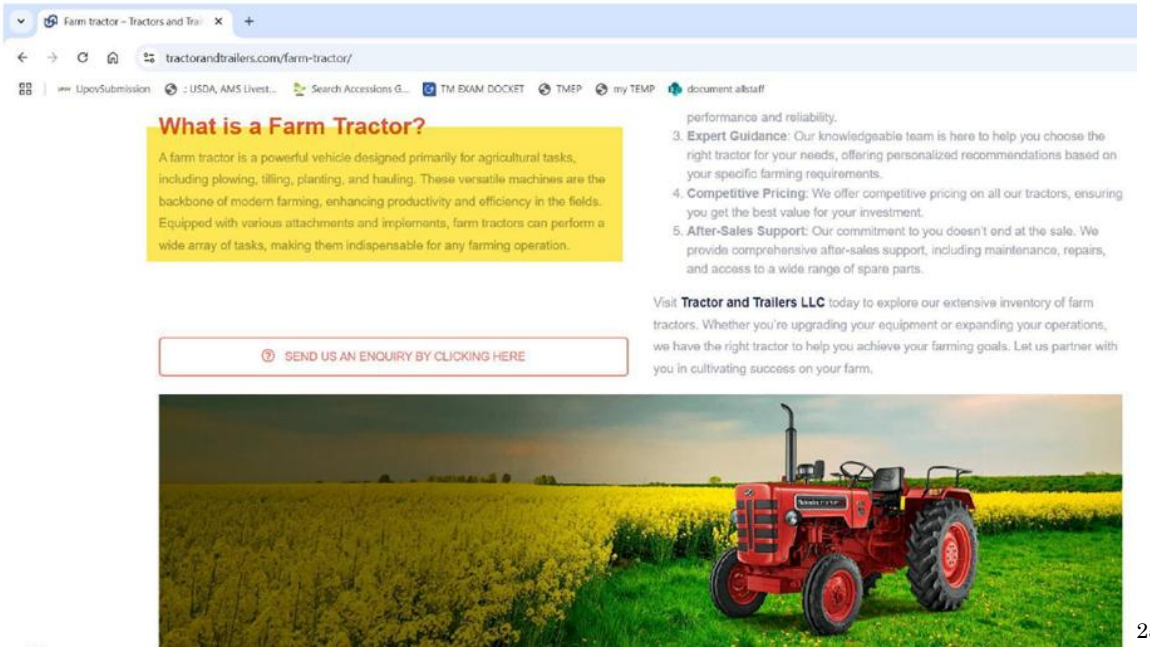
When taken together, these terms define a heavy-duty (i.e., industrial) machine capable of performing multiple functions powered by hydraulics. We cannot determine whether the hydraulics provide power to all operations of the machine, but it is clear that hydraulics must be a prime or primary force for operating the machine or key implements used with the machine. Given the record before us, which contains only the identification and eight lines of equipment Applicant considers to be within the scope of the identification, this is the clearest explanation we can articulate of the goods identified in the Application.

The Trademark Examining Attorney never confined her analysis to the specific type of tractors in the identification. We cannot sufficiently determine, therefore, which of the tractors in the record are actually of the same type of those identified in the Application, a key requirement as our *Thor Tech* precedent makes clear. The burden of supporting the refusal falls on the Trademark Examining Attorney, and without evidence of relevant goods, we cannot make a reasoned determination of what relevant consumers are accustomed to seeing in the market.

[23] https://www.merriam-webster.com/dictionary/hydraulic. There were alternative definitions of hydraulic, that refer to use of water, but given the context, we found the definition provided above is more likely applicable to this appeal.

[24] https://www.merriam-webster.com/dictionary/prime%20mover.

There is some evidence of what a "farm tractor" is, as shown below.



[25]

This evidence tells us something about farm tractors, but there is no mention of hydraulics. Do these tractors use hydraulics? Would relevant consumers consider a farm tractor to be an "industrial multifunction hydraulic prime mover"? These are key questions, but we have no evidence in the record to answer them. It is error to assume that any tractor is the same as the goods identified in the Application, particularly when the Application was amended from identifying simply "tractors" to the more detailed identification currently before us. For this reason, most of the evidence of record is of minimal probative value, just as the Board found true of five of the seven registrations submitted by the Trademark Examining Attorney in the *Thor Tech* case that were not limited to towable RV trailers.

[25] Final Office Action dated February 10, 2025, at 67.

Not all of the Examining Attorney's evidence, however, is of minimal probative value. We recognize that the Examining Attorney submitted evidence of tractors from John Deere, RK Tractors, and Kubota that include hydraulics and are advertised as multipurpose tractors (e.g., for use in vegetation management, snow removal, asphalt repair, etc.).[26] Given the previously-discussed uncertainty in the definition "industrial, multifunction hydraulic prime mover," it is unclear which, if any, of the John Deere, RK Tractors, and Kubota tractors fall within the scope of the identification. However, even accepting that they do, these are the only three manufacturers for which the Examining Attorney submitted evidence showing both a tractor arguably within the scope of the identification and a trailer sold under the same mark. In view of the uncertainty whether these tractors even fall within the scope of the identification, we find that these three examples are insufficient to prove that "industrial, multifunction hydraulic prime movers" are related to trailers.[27]

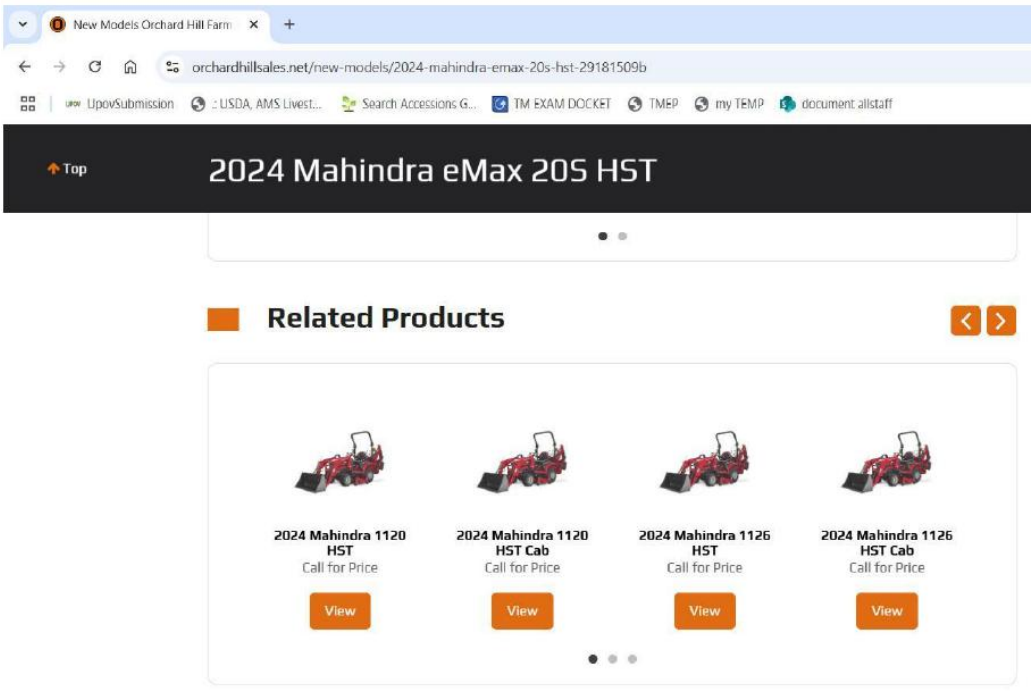
As for the remainder of the Examining Attorney's evidence, we find the evidence of record fails to support the Trademark Examining Attorney's arguments under the second *DuPont* factor. But we do not rest on that point alone. The Trademark

[26] Office Action dated December 30, 2024 at 16-69.

[27] The Examining Attorney did not submit any third-party registrations for goods listed in both the application and registration at issue to prove that the goods are related. Third-party registrations based on use in commerce that individually cover a number of different goods or services may have probative value to the extent that they serve to suggest that the listed goods or services are of a type that may emanate from the same source. *In re Country Oven, Inc.*, (Ser. No. 87354443) 2019 TTAB LEXIS 381, *18. *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1207.01(d)(iii) (May 2025) ("Third-party registrations that cover the goods or services of the applicant and registrant may have some probative value to the extent that they may serve to suggest that goods or services are of a type that may emanate from a single source, if the registrations are based on use in commerce.").

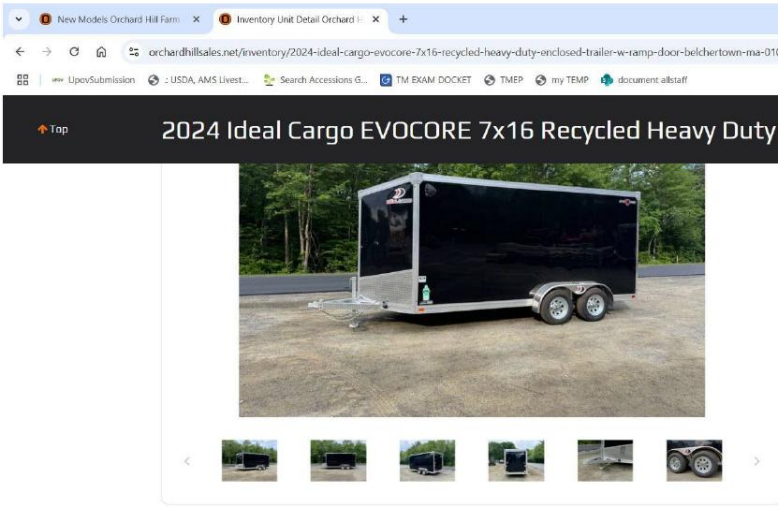
Examining Attorney also submitted evidence of dealers that sell both tractors and trailers. Again, the evidence was not limited to the specific type of tractors identified in the Application. But of equal importance, this evidence shows tractors and trailers of different brands being sold at these dealers.

Seeing brand X tractors and brand Y trailers being sold at a single retail store (with no brand Y tractors or brand X trailers) tends to show that these goods are not commonly sold under a single mark, but instead tend to come from different manufacturers. We provide an example of this type of evidence below. The images are from the website for Orchard Hill Farm Equipment. In the first image, we see a group of Mahindra tractors.[28]

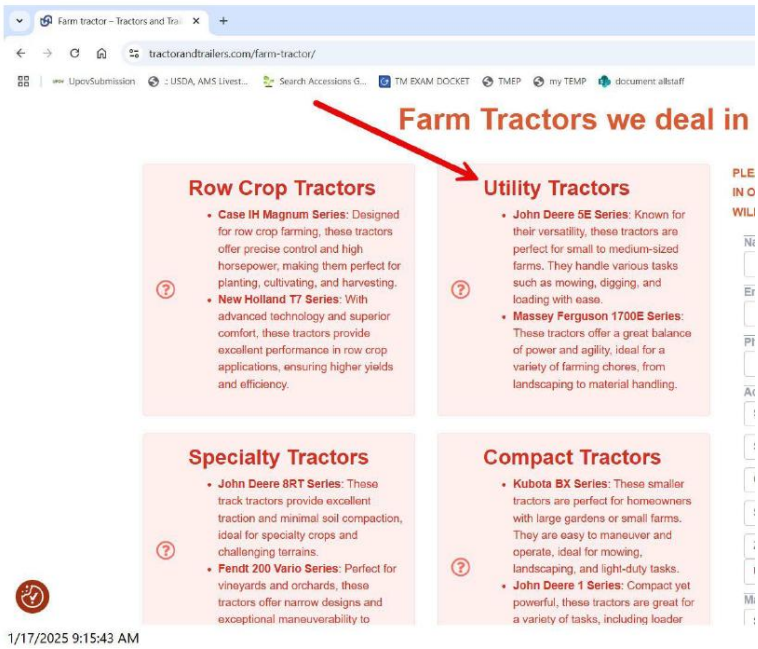


[28] *Id.* at 58.

In the next image, we see an Ideal Cargo trailer (while it is difficult to see, the Ideal Cargo mark is present on the front, upper-right corner of the trailer).[29]



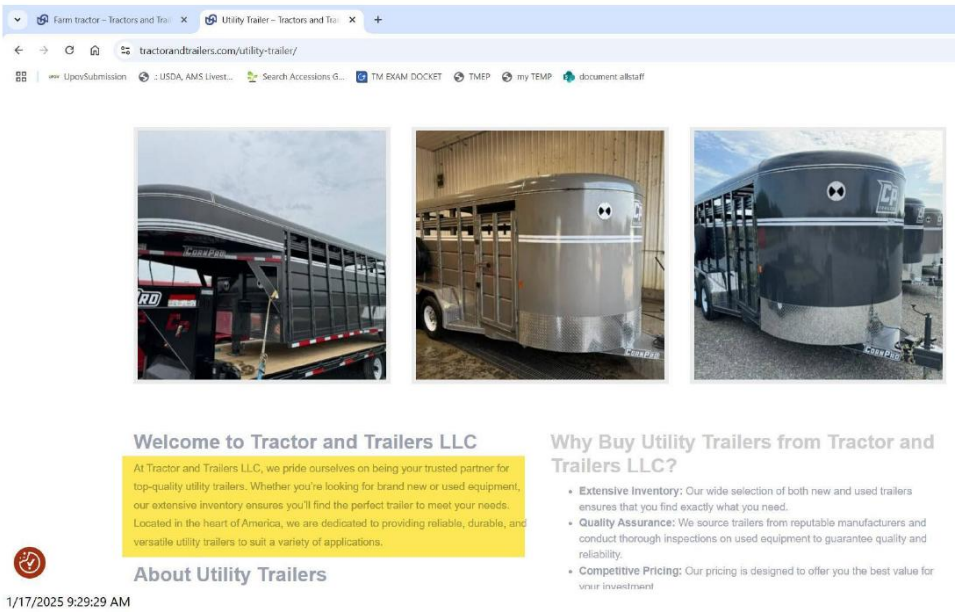
In the next example, we see a list of six different agricultural tractor brands sold by Tractors and Trailers LLC. [30]



[29] *Id.* at 61.

[30] *Id.* at 68.

The next image shows three Corn Pro trailers, also sold by Tractors and Trailers LLC.[31]



There are other trailers shown on the same website, but none of them bear the same brands as the farm tractors listed above. This evidence undermines, rather than supports, the Trademark Examining Attorney's argument that the goods are often sold under the same mark. These are just two examples from the record, which shows many different trailer brands that are not also shown with tractors. We agree with Applicant that the Trademark Examining Attorney's reliance on such evidence fails to support the refusal.

Considering the record as a whole, we find the Trademark Examining Attorney has failed to show that the goods are related. Most of the evidence is not sufficiently tailored to the actual goods identified in the Application. Other evidence tends to

[31] *Id.* at 73.

show that differently branded tractors and trailers are common. Given this record, we reach a similar conclusion to that reached in *Thor Tech*. The specific type of tractors identified by Applicant have not been shown to be related to the "trailers" identified in the cited Registration. The second *DuPont* factor weighs against a finding that confusion is likely.

C. Trade Channels

There is minimal evidence of the trade channels for Applicant's industrial tractors. The Trademark Examining Attorney submitted substantial evidence showing that agricultural or farm tractors are sold in the same trade channel as some trailers. Indeed, the retail outlet evidence we discussed under *DuPont* factor two establishes that farm tractors and trailers are often sold at the same dealership. But agricultural tractors are likely in a different market category from Applicant's industrial tractors. So, again, we are left with evidence that is not specific to the goods identified in the Application.

Given the ambiguities in the record evidence, we cannot determine whether the goods identified in the Application are sold through the same trade channels as trailers.[32] We treat the third *DuPont* factor as neutral.

[32] The Coblentz Declaration suggests that Mr. Coblentz's dealership sells "industrial multifunction hydraulic prime movers," as he discusses the buying process for such goods. Request for Reconsideration dated March 6, 2025, at 5. This evidence, therefore, suggests that the goods identified in the Application are sold through some of the same dealers that sell trailers, because the Trademark Examining Attorney submitted Internet evidence from Mr. Coblentz's dealership showing that it sells trailers. Denial of Request for Reconsideration dated April 7, 2025, at 29-30 (showing a small agricultural tractor pulling a trailer—the branding of tractor and trailer are not visible).

D. Customer Care

The fourth *DuPont* factor considers the likely care exercised by relevant consumers. *DuPont*, 476 F.2d at 1361 ("The conditions under which … sales are made, i.e. "impulse" vs. careful, sophisticated purchasing"). Relying on the Declaration of Matthew Coblentz, President of Coblentz Equipment & Parts Co., Inc. (the "Coblentz Declaration"), Applicant argues that relevant consumers are sophisticated because its industrial tractors are expensive and consumers are likely to exercise more care when buying expensive goods.[33] The Coblentz Declaration confirms this point, where he explains, "Given the specialized nature of industrial tractors, their procurement involves rigorous planning, detailed technical specification, careful compliance with regulatory standards, and substantial financial investment."[34] The Trademark Examining Attorney argues that even sophisticated consumers can be confused, but points to no evidence inconsistent with the Coblentz Declaration.

While we must consider "the least sophisticated potential purchasers," *In re FCA US LLC*, (Ser. No. 85650654) 2018 TTAB LEXIS 116, *29, the evidence shows that purchasers of Applicant's industrial tractors are sophisticated and are likely to make careful purchasing decisions. These circumstances reduce the risk of confusion. Given

[33] 6 TTABVUE 10-11.

[34] Request for Reconsideration dated March 6, 2025, at 5. This request was filed after the Trademark Examining Attorney denied the Request for Reconsideration. In that denial, the Trademark Examining Attorney submitted evidence from Mr. Coblenz's dealership, which presumably led Applicant to seek a declaration from the owner of that dealership. While such a submission by Applicant may have come out of the proper sequence, we consider it here both because it is probative and because the Trademark Examining Attorney made no objection to it.

the evidence of record in this appeal, we find the relevant consumers are likely to exercise great care when making purchasing decisions, thus significantly reducing the risk of confusion.[35] The fourth *DuPont* factor weighs against the likelihood of confusion refusal.

E. The Strength or Weakness of the Cited Mark

In our final weighing of the factors, the "similarity of the marks" factor will support a conclusion that confusion is likely. We must, however, consider how heavily. Usually, a finding of identical marks is said to weigh strongly or heavily in the final weighing. *See, e.g.*, *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024). But the relevant factors sometimes interact with one another. A factor that may come into play and, when supported, impacts the weight given to the similarity of the marks, is the sixth *Dupont* factor: "[t]he number and nature of similar marks in use on similar goods [or services]." *Dupont*, 476 F.2d at 1361. The sixth *DuPont* factor allows an applicant in an ex parte appeal to contract the scope of protection of a cited mark by adducing evidence of conceptual and commercial weakness.[36] *Id.* However, to be probative, the identified goods in the applicant's

[35] Consumers of "trailers," the goods identified in the Cited Registration, may not be so careful. Trailers is a broad category of goods, as the evidence shows. But even if a consumer buys a trailer without exercising great care, if the same consumer also purchases an industrial tractor of the type identified in the Application, our hypothetical consumer will exercise great care in making that purchase. And that fact shows why the customer care factor weighs against a likelihood of confusion in this appeal.

[36] The fifth *DuPont* factor examines the extent to which the public perceives the mark as indicating a single source of origin, i.e., its fame or commercial strength. *DuPont*, 476 F.2d at 1361. There is no evidence of record relating to commercial strength under the fifth *DuPont* factor, but in an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the

application and the goods in connection with which the third-party marks are used must be similar. *See Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1325 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus "on goods shown to be similar"). Applicant's evidence of third-party use or registration of marks with the word "VERSA" under *DuPont* factor six is not probative because it is not limited to the goods identified in the Application or Cited Registration. Additionally, none of the third-party marks are as close to the mark subject to the Cited Registration as Applicant's mark. *See, e.g.*, *Sabhnani v. Mirage Brands, LLC*, (Can. No. 92068086) 2021 TTAB LEXIS 464, *32 (third-party registration evidence discounted where they contained "additional elements that cause many of them to be less similar to Petitioner's mark than Respondent's marks are"). *DuPont* factor six, therefore, is neutral in our evaluation of the likelihood of confusion refusal.

F. Conclusion: Weighing the Factors

The marks are highly similar and this fact makes confusion more likely. But the goods have not been shown to be related and the consumers are likely to exercise great care when purchasing Applicant's goods. The likelihood of confusion question is somewhat close, but we find that, on balance, the record does not support the refusal. Much of the evidence relied upon by the Trademark Examining Attorney fails to show

cited mark in the marketplace. *In re Integrated Embedded*, Ser. No. 86140341, 2016 TTAB LEXIS 470, at *26 (TTAB 2016). *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(d)(ix) (May 2025). The fifth *DuPont* factor, as is normally the case in ex parte proceedings, is treated as neutral. *See In re Thomas*, Ser. No. 78334625, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

relevant goods. With unrelated goods and a high degree of customer care, even very similar marks can coexist. As we concluded in the *Thor Tech* decision:

> Despite the fact that the marks are identical, the difference in the nature of the goods and their channels of trade and the high degree of consumer care likely to be exercised by the relevant consumers supports the conclusion that applicant's mark TERRAIN for "recreational vehicles, namely, towable trailers" is not likely to cause confusion with the mark TERRAIN for "motor land vehicles, namely, trucks."

In re Thor Tech, Inc., 2015 TTAB LEXIS 18, *18-19.

Decision: The Section 2(d) refusal is reversed.