This Opinion is Not a Precedent of the TTAB

Mailed: March 9, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Aggressor Adventures, LLC

Serial No. 98356369

W. West Allen and Daniel H. Bliss of Howard & Howard Attorneys PLLC, for Aggressor Adventures, LLC

Ryan Cianci, Trademark Examining Attorney, Law Office 116, Elizabeth Jackson, Managing Attorney.

Before Greenbaum, Thurmon and Bradley, Administrative Trademark Judges.

Opinion by Bradley, Administrative Trademark Judge:

Aggressor Adventures, LLC ("Applicant") applied to register the standard-character mark WHERE LIFE HAPPENS on the Principal Register for "arranging and conducting safari expeditions for recreational purposes" in International Class 41.[1]

[1] Application Serial No. 98356369 was filed on January 13, 2024, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging Applicant's bona fide intent to use the mark in commerce. The Application also initially included "hotel, restaurant and bar services" in International Class 43, but Applicant deleted these services in its October 13, 2024 Response to Office Action.

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark is likely to cause confusion with the standard character mark WHERE LIFE HAPPENS registered on the Principal Register for "restaurant services" in International Class 43.[2]

After the Examining Attorney issued the final refusal, Applicant appealed and requested reconsideration.[3] The Examining Attorney denied the request for reconsideration,[4] and Applicant and the Examining Attorney then filed briefs.[5] We reverse the refusal to register.

I. Likelihood of Confusion

Our determination under Section 2(d) of the Trademark Act involves an analysis of all of the probative evidence of record that is relevant to the factors bearing on a likelihood of confusion. *See In re E.I. DuPont DeNemours & Co.,* 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772,* 396 F.3d 1369, 1371 (Fed. Cir. 2005).

We must consider "each *DuPont* factor for which there is evidence and argument." *Spireon, Inc. v. Flex Ltd*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *In re Guild Mortg. Co.*, 912 F.3d 1376, 1380 (Fed. Cir. 2019)). "The weight given to each factor depends on the circumstances of each case." *In re Charger Ventures LLC*, 64 F.4th

[2] Registration No. 4658288, registered on December 23, 2014 and has been maintained.

[3] 1 TTABVUE.

[4] 4 TTABVUE.

[5] 6 TTABVUE (Applicant's brief); 8 TTABVUE (Examining Attorney's brief); 9 TTABVUE (Applicant's reply brief).

1375, 1381 (Fed. Cir. 2023). "[A]ny one of the factors may control a particular case." *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (citation omitted). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See In re i.am.symbolic, llc,* 866 F.3d 1315, 1322 (Fed. Cir. 2017) ("likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but 'may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods'") (alteration in the original) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)). These and other factors addressed by Applicant and the Examining Attorney are discussed below.[6]

A. Similarity of the Marks

We evaluate "[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." *In re Detroit Ath. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (*citing DuPont*, 476 F.2d at 1361). Here, the standard-character marks WHERE LIFE HAPPENS in the Application and cited Registration are identical in all aspects.

[6] At the end of its appeal brief, Applicant includes a discussion of cases that support its overall position. 6 TTABVUE 15-16 ("Other Cases Favor Applicant"). The Examining Attorney treats Applicant's case discussion as raising an argument under the thirteenth *DuPont* factor which the Examining Attorney asserts favors a finding of likelihood of confusion or is neutral. 8 TTABVUE 9-11. We do not view Applicant's discussion of cases as addressing the thirteenth *DuPont* factor, but rather as merely identifying what Applicant views as legal support for its arguments on the other *DuPont* factors addressed in the case. Accordingly, we do not discuss the thirteenth *DuPont* factor herein.

B. Similarity of the Services

Under the second factor, we analyze the "similarity or dissimilarity and nature of the goods or services" and "consider the applicant's goods [or services] as set forth in its application, and the [registrant's services] as set forth in its registration." *i.am.symbolic,* 866 F.3d at 1325 (alteration in the original) (quoting *M2 Software, Inc. v. M2 Communs., Inc.*, 450 F.3d 1378, 1382 (Fed. Cir. 2006)). "[I]t is not necessary that the [services] of the parties be similar or even competitive to support a finding of likelihood of confusion." *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (citation omitted). Rather, the question is whether the "respective [services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source." *Id*. Put another way, the relevant inquiry is whether "consumers are accustomed to seeing the applied-for and registered [services] originating from the same source[.]" *Detroit Ath.*, 903 F.3d at 1307 (citation omitted).

Applicant's identified services are "arranging and conducting safari expeditions for recreational purposes." Registrant's identified services are "restaurant services." We focus first on the scope of Applicant's identified services as Applicant and the Examining Attorney present dueling claims of what the identification encompasses. The Examining Attorney attempts to broaden the identified services by ignoring the word "safari." Specifically, the Examining Attorney takes the position that Applicant's services of "arranging and conducting safari expeditions for recreational

purposes" encompass arranging and conducting any recreational tour or expedition,[7] and the mere fact that "[A]pplicant has chosen the word 'safari' to describe its recreational tours or outings" does not limit Applicant's services to any particular type of tour or expedition.[8] We disagree.

Both the Examining Attorney and Applicant submitted the same dictionary definition from MERRIAM-WEBSTER[9] defining a "safari" as "the caravan and equipment of a hunting expedition especially in eastern Africa."[10] This is consistent with other dictionary definitions of "safari" including:

- "a trip to watch, photograph, or hunt wild animals in their natural environment";[11]

---

[7] July 3, 2025 Denial of Request for Reconsideration at 4.

[8] 8 TTABVUE 7-8. The Examining Attorney also argues that "[b]ecause the [A]pplicant ostensibly offers the same all-inclusive travel and leisure services as the cited third-parties, the applicant's fixation on a truncated denotation of 'safari' is not believable." *Id.* at 8. Yet, Applicant's identified services are not "all-inclusive travel and leisure services," but rather are limited to arranging and conducting safari expeditions.

[9] We overrule the Examining Attorney's objection to this definition (at 8 TTABVUE 2-3), at a minimum, because the Examining Attorney made the same definition from MERRIAM-WEBSTER of record during prosecution with its denial of Applicant's request for reconsideration. July 3, 2025 Denial of Request for Reconsideration at 78.

[10] July 3, 2025 Denial of Request for Reconsideration at 78 (first definition). The Examining Attorney points to a secondary definition of "journey, expedition," to support its broader interpretation of "safari", but this secondary definition conflicts with the primary definition and those reflected in other dictionary definitions discussed herein. That the first listed definition is the commonly understood meaning of the word "safari" is confirmed by the examples listed under the definitions of safari used in a sentence, "He went on a safari in Africa last year," and "a group of hunters on safari" which both reference the meaning reflected in the first listed definition. *Id.*

[11] CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH (2026) (https://dictionary.cambridge.org/dictionary/english/safari), accessed March 9, 2026. The Board may take judicial notice of dictionary evidence, *In re Cordua Rests. LP*, No. 85214191, 2014 TTAB LEXIS 94, at *6 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594 (Fed. Cir. 2016), including from online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, No. 75788830, 2006 TTAB LEXIS 136, at *6-9 (TTAB 2006).

- "an overland expedition, especially one for hunting or viewing wildlife in eastern Africa";[12] and
- "a journey or hunting expedition, esp. in E. Africa."[13]

Additionally, the Encyclopedia Brittanica explains that, "[b]y the last quarter of the 20th century, safaris were made mainly by tourists who examined and photographed game in national preserves."[14] The Examining Attorney also provided screenshots from Applicant's website[15] which show that the safari expeditions offered by Applicant consist of expeditions to view wild game in national preserves.[16] Considered together, the definitions, encyclopedia description and the descriptions on Applicant's website make it clear that the "safari expeditions" recited in the Application are a

[12] THE AMERICAN HERITAGE DICTIONARY (2022) (https://ahdictionary.com/word/search.html?q=safari), accessed March 9, 2026. We similarly take judicial notice of this dictionary definition. *See supra* n. 11.

[13] July 3, 2025 Denial of Request for Reconsideration at 79.

[14] ENCYCLOPEDIA BRITANNICA (2026) (https://www.britannica.com/sports/hunting-sport/Hunting-codes#ref244968), accessed March 9, 2026. "The Board may take judicial notice of encyclopedia entries." *In re Leathernecks Motorcycle Club Int'l, Inc.*, No. 90498154, 2024 TTAB LEXIS 208, at *4 n.4 (TTAB 2024) (citation omitted).

[15] July 3, 2025 Denial of Request for Reconsideration at 85-90. The Examining Attorney argues that Applicant's website demonstrates that it "has espoused a broad denotation of 'safari'" pointing to references to other activities on the website such as birdwatching, archeological tours, and cultural immersions. 8 TTABVUE 8. Yet, viewed in context on Applicant's website it is clear that safari expeditions are one specific type of service offered by Applicant. For example, in describing the available itineraries, Applicant's website lists a "7 Day Animal Safari, Cultural & Birding Itinerary" as well as a "7 Day Group Birding Itinerary" all of which separately identify the specific service encompassed within each category. July 3, 2025 Denial of Request for Reconsideration at 86-88.

[16] Applicant's website states, "guests are taken on an afternoon safari into Wilpattu National Park around 2:30 pm to experience big game viewing of the parks with potential to see leopards, elephants, bears, buffalos, deer, crocodiles, jackals and many other animals and birds in their natural, jungle habitat." *See* July 3, 2025 Denial of Request for Reconsideration at 87. It also states that, "guests are taken on an afternoon safari from 2:30 pm into Minneriya National Park. It is home to the largest known Asian elephant gathering on Earth. Guests relax and watch as these huge animals drink, play and snack on the green, lush grasses that have been exposed by the receding water." *Id.*

specific type of journey or expedition that includes viewing and/or hunting game, and does not encompass other kinds of recreational tours or expeditions. With this understanding of the nature of Applicant's services, we turn to the evidence of record regarding the similarity or dissimilarity and nature of the Applicant's and Registrant's services.

Applicant stresses that "[t]he Examining Attorney concedes the compared services are different."[17] However, as we stated above, Applicant's and Registrant's services need not be identical or even competitive in order to find a likelihood of confusion. *Coach Servs.*, 668 F.3d at 1369 (citation omitted); *Detroit Ath.*, 903 F.3d at 1307 (citation omitted). As discussed below, there is insufficient evidence to support a finding that the services are related.

The Examining Attorney submitted evidence of 18 third-party uses to "establish[] the compared services are related as they commonly emanate from the same source."[18] Evidence that "third-party companies sell both types of [services] is pertinent to the relatedness of the [services]." *Naterra*, 92 F.4th at 1117; *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *5 (TTAB 2019) ("Evidence of relatedness may include . . . advertisements showing that the relevant goods and services are advertised together or sold by the same manufacturer or dealer[.]"). However, we agree with the Applicant that all of the third-party uses provided by the Examining Attorney are irrelevant because they do not show both the services

[17] 9 TTABVUE 3; 8 TTABVUE 7.

[18] 8 TTABVUE 7; July 13, 2024 Office Action at 8-20; December 6, 2024 Final Office Action at 7-22; July 3, 2025 Denial of Request for Reconsideration at 6-77.

identified in Applicant's Application and the cited Registration.[19] Specifically, five of the 18 third-party uses do not include any reference to restaurant services or safari expedition services.[20] Of the remaining 13 third-party uses, 12 do not cover any safari expedition services,[21] and instead feature a wide variety of activities such as scuba & water sports,[22] fly-fishing,[23] catamaran cruises,[24] and snowcat and snowmobile excursions.[25]

Only one of the third-party uses provided by the Examining Attorney, the Hard Rock hotel in Punta Cana, offers a "Safari half day tour".[26] However, the screenshots submitted by the Examining Attorney for this use do not show any restaurant

[19] 6 TTABVUE 8-9.

[20] July 13, 2024 Office Action at 13-16, 19-20; December 6, 2024 Final Office Action at 9-14.

[21] The Examining Attorney points to the fact that "[A]pplicant continues to describe its services as 'excursions'" as evidence that Applicant's services are similar to the third-party uses in the record. 8 TTABVUE 8. But "a finding that the [services] are similar is not based on whether a general term or overarching relationship can be found to encompass them both." *Edwards Lifesciences Corp. v. VigiLanz Corp.*, No. 91154210, 2010 TTAB LEXIS 84, at *38 (TTAB 2010); *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, No. 91184576, 2011 TTAB LEXIS 259, at *27 (TTAB 2011) ("in order to find that goods and services are related, there must be more of a connection than that a single term, in this case 'financial field,' may be used to generally describe them").

[22] July 13, 2024 Office Action at 10.

[23] July 3, 2025 Denial of Request for Reconsideration at 6-11.

[24] December 6, 2024 Final Office Action at 19.

[25] July 3, 2025 Denial of Request for Reconsideration at 45-47. *See also* July 13, 2024 Office Action at 17-18 ("unforgettable experiences"); December 6, 2024 Final Office Action at 7-8 (airboat tours), 15 (unspecified "adventure tours"), 16-17 ("tour groups"); July 3, 2025 Denial of Request for Reconsideration at 30-32 ("fishing & lobstering trips"), 34-39 (adventure packages that include activities such as a private sunset champagne cruise), 51-53 (excursions in Yosemite such as snowshoeing, rafting and airplane rides). And 60-70 (various options to "Customize Your Alaskan Adventure").

[26] December 6, 2024 Final Office Action at 21.

services, and just list a menu link for "eat & drink", without showing what is available under this link or any information on potential restaurant services.[27]

Similarly, while the screenshots from Applicant's website include descriptions of its safari expeditions services, they only contain oblique references to meals or food (e.g., "after breakfast" or "back to the Signature Lodge for dinner"), without any information regarding restaurant services.[28]

The Examining Attorney further submitted third-party use-based registrations and Applicant's use-based registrations for other marks to demonstrate relatedness.[29] *Country Oven*, 2019 TTAB LEXIS 381, at *5 ("Evidence of relatedness may include . . . copies of use-based registrations of the same mark for both the applicant's services and the goods listed in the cited registration."). However, only three of the third-party registrations cover both safari expeditions or tours, and restaurant services.[30] And two of those third-party registrations have the same owner thereby only showing two third parties.

We acknowledge that Applicant's use-based registrations for other marks cover both safari expedition services and restaurant services. However, the totality of evidence is insufficient to demonstrate relatedness of Applicant's and Registrant's

[27] *Id.* at 20.

[28] July 3, 2025 Denial of Request for Reconsideration at 87-88. We do not consider evidence submitted by the Examining Attorney from a different application for a different mark owned by Applicant, (*id.* at 4, 81-84; 8 TTABVUE 7, 12), because the application is abandoned. *Kemi Organics, LLC v. Gupta*, No. 92065613, 2018 TTAB LEXIS 149, at *17 (TTAB 2018) ("abandoned application has no probative value other than as evidence that the application was filed"). Applicant's objection to this evidence, (at 9 TTABVUE 3), is therefore moot.

[29] December 6, 2024 Final Office Action at 23-58.

[30] *Id.* at 27-28, 40-43.

services given the vast majority of the evidence shows only either Applicant's identified services or Registrant's identified services, but not both. On balance, the evidence of record does not show that consumers are accustomed to seeing Applicant's and Registrant's services originating from the same source. *See Detroit Ath.*, 903 F.3d at 1307 (citation omitted).

C. Similarity of Trade Channels and Classes of Purchasers

We next turn to the *DuPont* factor concerning the similarity or dissimilarity of the trade channels in which, and the classes of purchasers to whom, Applicant's and Registrant's respective services are marketed. *DuPont*, 476 F.2d at 1361; *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1322-23 (Fed. Cir. 2014). Just as with our analysis of the relatedness of Applicant's and Registrant's services, we must base our analysis under this factor on the identifications in the involved Application and cited Registration. *Stone Lion*, 746 F.3d at 1323; *Detroit Ath.*, 903 F.3d at 1308 (factor "must be evaluated with an eye toward the channels specified in the application and registration").

Here, the Examining Attorney erred in asserting that since the non-identical identifications of services at issue lack restrictions, they are presumed to travel in the same trade channels to the same class of purchasers.[31] This presumption applies only where goods or services are identical or legally identical. *See, e.g., In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (where the goods at issue were identical, the Board was "entitled to rely on th[e] legal presumption" that the trade channels

[31] 8 TTABVUE 8.

and consumers also were identical); *In re Inn at St. John's*, No. 87075988, 2018 TTAB LEXIS 170, at *6 (TTAB 2018) ("Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same."). Where, as here, the services are **not** identical, we may presume only that they travel in whatever trade channels are normal for each type of service. *Coach Servs.*, 668 F.3d at 1370 ("the [services] are presumed to travel in all normal channels and to all prospective purchasers for the relevant [services]").

As evidence of overlapping trade channels, the Examining Attorney points to the same third-party uses and screenshots from Applicant's website discussed above.[32] But the evidentiary infirmities identified above apply equally to our analysis under this *DuPont* factor. In sum, this evidence is insufficient to show the normal trade channels and purchasers of Applicant's and Registrant's services overlap. *See M2 Software*, 450 F.3d at 1384 ("the absence of any demonstrated overlap as to the . . . channels of trade or purchasers eliminates any basis from which one might infer it"); *see also In re OSF Healthcare Sys.*, No. 88706809, 2023 TTAB LEXIS 353, at *30-31 (TTAB 2023) ("at most, one relevant third-party website . . . does not establish that the channels of trade or classes of consumers for these services overlap").

D. Purchaser Care

In analyzing purchaser care we consider the "conditions under which and buyers to whom sales are made, i.e., 'impulse' v. careful, sophisticated purchasing." *DuPont*,

[32] *Id.* at 9.

476 F.2d at 1361. We must base our decision on "the least sophisticated potential purchasers." *Stone Lion*, 746 F.3d at 1325.

Applicant argues that:

> purchasers for restaurant services and safari expedition services are highly sophisticated and discriminating purchasers in selecting the type of restaurant services and safari expedition services they want to purchase and use. In addition, the price of safari expeditions is in the thousands of dollars and not hundreds of dollars as for restaurant services.[33]

Because there are no limitations on price point or consumer type in either the Application or the cited Registration, we must presume that the safari expedition services in the Application, and the restaurant services in the cited Registration, are sold at all price points and to all types of consumers. For Registrant's restaurant services this may include fast casual establishments where low-cost items are purchased on impulse as well as fine dining establishments where consumers exercise more care. For Applicant's safari expedition services, the very nature of the services makes it likely that consumers will exercise some care in making decision regarding such a trip. However, "even sophisticated purchasers can be confused by very similar marks." *In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993).

E. Strength or Weakness of Registrant's Mark

"There are two prongs of analysis for a mark's strength under the sixth [*DuPont*] factor: conceptual strength and commercial strength." *See, e.g., Spireon*, 71 F.4th at

[33] 6 TTABVUE 13.

1362.[34] On conceptual strength, because the cited Registration is "prima facie evidence of the validity of the registered mark," *see* Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), we must assume that Registrant's mark WHERE LIFE HAPPENS is inherently distinctive (i.e., at least suggestive), since it is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. *See New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 TTAB LEXIS 199, at *29-30 (TTAB 2020). Applicant argues that:

> The phrase "where life happens" doesn't have a formal dictionary definition; it is a colloquial expression. Its meaning depends heavily on context, but it generally refers to the idea that the true essence of living occurs in the midst of the unexpected and unplanned. The phrase "Where Life Happens" is at best suggestive, and in particular, highly suggestive of restaurant services, which are unexpected and unplanned. However, the phrase "Where Life Happens" is not suggestive of arranging and conducting safari expeditions for recreational purposes.[35]

But Applicant does not submit any evidence in support of this argument and "assertions of fact" in a brief are "not evidence under any of the relevant rules." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 371 (Fed. Cir. 2018).

[34] The Examining Attorney asserts that "the [A]pplicant raises fame as an aside via innuendo" and that "[t]he purported lack of fame of the cited mark, as argued by [A]pplicant, is not significant to the issue of likelihood of confusion in ex parte examination." 8 TTABVUE 5. While Applicant references the fifth *DuPont* factor, it does so in relation to the conceptual and commercial strength of the cited mark and does not discuss fame or any of the types of evidence considered in relation thereto. 6 TTABVUE 6. Accordingly, we do not consider that Applicant submits arguments regarding fame.

[35] 6 TTABVUE 6-7; 9 TTABVUE 5.

On commercial strength, Applicant asserts that the cited Registration is commercially weak but again fails to provide any evidence such as third-party use.[36] *See In re FCA US LLC*, No. 85650654, 2018 TTAB LEXIS 116, at *37 (TTAB 2018) ("Evidence of third-party use may reflect commercial weakness[.]"); *New Era*, 2020 TTAB LEXIS 199, at *36 ("Applicant did not provide evidence of any third-party use of marks consisting of or comprised of the term ERA for these goods, and thus no evidence of commercial weakness.").

Accordingly, we find that Applicant has not demonstrated that Registrant's mark is conceptually or commercially weak, and as such Registrant's mark is entitled to "the normal scope of protection to which inherently distinctive marks are entitled." *Bell's Brewery, Inc. v. Innovation Brewing*, No. 91215896, 2017 TTAB LEXIS 452, at *20 (TTAB 2017).

F. Other Factors

Applicant asserts that "there is no actual confusion [and] [t]herefore, this *DuPont* factor favors Applicant."[37] However, "[t]he lack of evidence of actual confusion carries little weight, especially in an ex parte context," and the fact that Applicant filed its application on an intent-to-use basis, and there is no evidence of Applicant's use of the mark, indicate that there has not been an opportunity for confusion to occur. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (citation omitted); *Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 251,

[36] 6 TTABVUE 7; 9 TTABVUE 5-6.

[37] 6 TTABVUE 14.

at*71 (TTAB 2022) ("for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred"). Accordingly, we find this factor neutral.

Finally, Applicant argues that "any potential confusion would be *de minimis*" given the differences in Applicant's and Registrant's services and because "the registrant's services are restaurant services in the United States and Applicant's services are arranging and conducting safari expeditions for recreational purposes in foreign countries."[38] Applicant's arguments "concerning the extent of potential confusion under this factor essentially repeat arguments under the other *DuPont* factors, and have been duly considered." *Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 TTAB LEXIS 494, at *94 (TTAB 2024). Accordingly, we find this factor neutral.

II. Conclusion

After reviewing the evidence of record, and the arguments relating thereto, we conclude that the record here does not show a likelihood of confusion. Applicant's and Registrant's marks are identical, which weighs heavily in favor of likelihood of confusion. *See Naterra*, 92 F.4th at 1119. Given the identity of the marks, the degree of similarity between the services required to support a finding of likelihood of confusion declines. *See DeVivo v. Ortiz*, No. 91242863, 2020 TTAB LEXIS 15, at *36 (TTAB 2020) ("because the marks are identical, the degree of similarity between the goods or services required for confusion to be likely declines").

[38] *Id.* at 15; *see also* 9 TTABVUE 6.

However, even with the lesser degree of similarity required because of the identical marks, the two third-party registrations and Applicant's prior registrations are insufficient to establish the relatedness of Applicant's and Registrant's services, when considered against the 18 third-party uses that do not show both Applicant's and Registrant's services, and the absence of any use with restaurant services on screenshots of Applicant's website in the record. *See OSF Healthcare*, 2023 TTAB LEXIS 353, at *40-41 (despite the identical marks, the "at most, two relevant third-party websites . . . is insufficient to establish that [a]pplicant's Class 45 services and the services in Class 35 or Class 41 in the cited registration are related"). Additionally, the evidence of record does not establish that Applicant's and Registrant's trade channels or consumers overlap. We therefore weigh these *DuPont* factors heavily against a finding of likely confusion. *See M2 Software*, 450 F.3d at 1384 ("unrelated nature of the [services] and their different purchasers and channels of trade are factors that weigh heavily against [confusion]").

The *DuPont* factors regarding strength of Registrant's mark, purchaser care, actual confusion, and extent of potential confusion are neutral.

Considered together, we find that on this record the differences in the services, channels of trade, and classes of consumers outweigh the identity of the marks. Accordingly, we conclude confusion is unlikely.

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