

This Opinion is Not a
Precedent of the TTAB

Mailed: July 23, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Andrew Riess

Serial No. 98436600

Brian D. Owens of Goodhue, Coleman & Owens, P.C. for Andrew Riess.

Betty Chang, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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

Opinion by Larkin, Administrative Trademark Judge:

Andrew Riess (“Applicant”) seeks registration on the Principal Register of the standard-character mark BRECKIN ANKLES for goods ultimately identified as “Apparel, namely, clothing being tops, bottoms, headwear, footwear, all the foregoing goods to be used in relation to basketball; Basketball accessories, namely, headbands and wrist bands as clothing” in International Class 25.¹

¹ Application Serial No. 98436600 was filed on March 6, 2024 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce. As discussed below, the application originally also covered goods in Class 28, but was subsequently divided. Only the Class 25 portion of the original

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the mark shown below



registered on the Principal Register for "Clothing, namely, shirts, hats, tops, pants" in International Class 25,² as to be likely to cause confusion when used in connection with the goods identified in the application.

When the Examining Attorney made the refusal final, Applicant appealed and simultaneously requested reconsideration, which was denied. The appeal is fully briefed.³ We reverse the refusal to register.

application is before us on appeal. Applicant has disclaimed the exclusive right to use ANKLES apart from the mark as shown.

² The cited Registration No. 4208147 (the "147 Registration") issued on September 18, 2012 and has been renewed. The registrant describes the mark as follows: "The mark consists of the wording 'BREKENS B' in stylized font." Color is not claimed as a feature of the mark.

³ Citations in this opinion to the briefs and other materials in the case docket refer to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant's original appeal brief exceeded the allowed page limit, and Applicant was allowed to file a supplemental appeal brief, which appears at 15 TTABVUE. The Examining Attorney's brief appears at 17 TTABVUE, and Applicant's reply brief appears at 18 TTABVUE.

I. Prosecution and Procedural History, and Record on Appeal⁴

We briefly summarize below the prosecution history of the application, and the procedural history of the appeal, because they provide useful background to our disposition of the appeal.

Applicant originally applied to register his mark for “apparel” in Class 25 and “sporting goods” in Class 28.⁵ The Examining Attorney refused registration as to Class 25 under Section 2(d) based on the ’147 Registration, required Applicant to disclaim the exclusive right to use ANKLES apart from the mark as shown, and required amendments to Applicant’s goods identifications.⁶ The Examining Attorney made of record USPTO electronic records regarding the ’147 Registration,⁷ pages from the websites at thebump.com and nameopia.com regarding the meaning of “Brecken” and “Breckin,”⁸ and a dictionary definition of “ankle.”⁹

Applicant responded by arguing against the Section 2(d) refusal and the disclaimer requirement, and amending his identifications of goods to “Apparel, namely, clothing being tops, bottoms, headwear, footwear” in Class 25 and “Sporting goods, namely, basketballs, basketball equipment, basketball accessories” in Class

⁴ Citations in this opinion to the application record are to pages in the downloadable .pdf version of the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

⁵ March 6, 2024 Application at 1.

⁶ September 19, 2024 Office Action at 2-4.

⁷ *Id.* at 6-7.

⁸ *Id.* at 8-13.

⁹ *Id.* at 14-20.

28.¹⁰ Applicant made of record pages from searches of the websites at thebump.com and nameopia.com showing no entries for “breken” or “brekens;”¹¹ USPTO electronic records from the file history of the application that matured into the ’147 Registration;¹² pages from the website at slang.net captioned “Breaking Ankles – What does breaking ankles mean in sports?;”¹³ a definition of the adjectival phrase “ankle-breaking” from the website at oed.com (OXFORD ENGLISH DICTIONARY);¹⁴ photographs of what Applicant described as the cited registrant’s specimens;¹⁵ and the results of a search of the Google search engine for the term “brekens clothing.”¹⁶

The Examining Attorney then issued an Office Action making final the refusal to register in Class 25, the disclaimer requirement, and the requirement for amendment to Applicant’s Class 28 identification of goods.¹⁷ The Examining Attorney made of record pages from the MERRIAM-WEBSTER DICTIONARY regarding the letter “S;”¹⁸ pages from the website at theglobalmontessorinetwork.org captioned “How to Pronounce ‘e’;”¹⁹ pages defining the word “breaking” from the MERRIAM-WEBSTER

¹⁰ December 17, 2024 Response to Office Action at 7-21.

¹¹ *Id.* at 22-36.

¹² *Id.* at 37-45.

¹³ *Id.* at 46-47.

¹⁴ *Id.* at 48-49.

¹⁵ *Id.* at 15, 50-51.

¹⁶ *Id.* at 52-58.

¹⁷ December 20, 2024 Final Office Action at 1-8.

¹⁸ *Id.* at 9-18.

¹⁹ *Id.* at 19-21.

DICTIONARY;²⁰ pages from the CAMBRIDGE DICTIONARY translating the Dutch verb “breken” into English;²¹ pages from the website at sockgeeks.co discussing sock lengths;²² pages from the website at bombas.com displaying and discussing women’s socks;²³ and pages from the MERRIAM-WEBSTER DICTIONARY defining the term “ankle boot.”²⁴

Applicant appealed and simultaneously requested reconsideration. In his Request for Reconsideration, Applicant further amended his Class 25 identification of goods to read “Apparel, namely, clothing being tops, bottoms, headwear, footwear, all the foregoing goods to be used in relation to basketball; Basketball accessories, namely, headbands and wrist bands as clothing,”²⁵ entered a disclaimer of the exclusive right to use ANKLES apart from the mark as shown,²⁶ and argued against the Section 2(d) refusal. Applicant made of record the results of searches of the Google search engine for the terms “breckin ankles” and “brekens;”²⁷ Facebook pages regarding Applicant’s son, Brekin Reese, who was described as “The Next Superstar of the NBA;”²⁸ Instagram pages with the handle breckin_ankles featuring Brekin Reese;²⁹ an

²⁰ *Id.* at 22-26.

²¹ *Id.* at 27-29.

²² *Id.* at 30-35.

²³ *Id.* at 36-43.

²⁴ *Id.* at 44-47.

²⁵ June 19, 2025 Request for Reconsideration at 8.

²⁶ *Id.* at 28.

²⁷ *Id.* at 31-34, 55-57.

²⁸ *Id.* at 35-39.

²⁹ *Id.* at 40-54. Several of the pages are blank.

additional photograph of the registrant's specimens;³⁰ and pages from the website at brekkens.com.³¹

The Examining Attorney denied Applicant's Request for Reconsideration, making of record pages from the websites at ebay.com, reebok.com, champrosports.com, adidas.com, and nike.com.³² The appeal was then resumed. 5 TTABVUE.

Applicant then filed a Request to Divide Application, 6 TTABVUE, and the Board again suspended the appeal and remanded the application to the Examining Attorney for consideration of the Request to Divide. 8 TTABVUE 1-2. The application was divided, and the Examining Attorney issued a Subsequent Final Office Action on the "parent" Class 25 application, holding the Section 2(d) refusal final.³³ The appeal was then resumed, 10 TTABVUE, and is now ready for decision.

II. Evidentiary Issue

Applicant argues in his supplemental appeal brief that his

related application for BRECKIN ANKLES, now U.S. Serial No. 98976721, in International Class 28 which covers related "sporting goods, namely basketballs, basketball equipment, basketball accessories, namely, bags adapted for holding or carrying basketballs" was originally part of this same application and its Class 28 goods were not opposed by Registrant, and Applicant's BRECKIN ANKLES Class 28 mark is now allowed.

³⁰ *Id.* at 58.

³¹ *Id.* at 59-67.

³² July 8, 2025 Denial of Request for Reconsideration at 1-64.

³³ October 7, 2025 Subsequent Final Office Action at 1-2.

15 TTABVUE 22. Applicant attaches as Exhibit 1 to his supplemental appeal brief what he describes as a notice of allowance of his other application, which he requests “be allowed as evidence herein,” *id.*, to “illustrate that there will be no adverse consequences for the Cited Mark should Applicant’s BRECKIN ANKLES mark be registered.” *Id.* The Examining Attorney responds that Exhibit 1 is untimely, and requests that the Board disregard it. 17 TTABVUE 12.

We need not decide the specific objection made by the Examining Attorney because the current status of Applicant’s “child” application, which covers different goods in Class 28, is irrelevant to the issue of whether the Examining Attorney properly refused registration of the BRECKIN ANKLES mark, based on the ’147 Registration, for the Class 25 goods identified in Applicant’s “parent” application. *See, e.g., In re Korn Ferry*, No. 90890949, 2024 WL 3219482, at *5 (TTAB 2024) (“It is axiomatic that the Board must assess each mark on its own facts and record,” and “[e]ach case is decided on its own facts, and each mark stands on its own merits.”) (quotations and quotation marks omitted)).

III. Analysis of Likelihood of Confusion Refusal

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (citation omitted) (cleaned up). Our determination of the likelihood of confusion under Section 2(d) of the Trademark Act is based on an analysis of all probative facts in the record that are relevant to the

likelihood of confusion factors set forth in *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). *Charger Ventures*, 64 F.4th at 1379. We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

“Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because 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.” *DC Comics v. Cellular Nerd LLC*, No. 91246950, 2022 WL 17832492, at *10 (TTAB 2022) (internal quotations and quotation marks omitted).

Applicant’s supplemental appeal brief primarily addresses the key first *DuPont* factor. 15 TTABVUE 5-18. It also contains a section captioned “Applicant’s Goods and the Registrant’s Goods Present No Likelihood of Confusion to the Average Consumer,” *id.* at 18-21, which does not address the second *DuPont* factor per se, but instead focuses primarily on how the use of Applicant’s mark with his basketball-related goods affects the mark’s meaning, and sections captioned “There will be No Adverse Commercial Impact to Registrant if Applicant’s Mark is Registered,” *id.* at 22, and “Any Potential Likelihood of Confusion Between Applicant’s mark and the Cited Mark is Merely Theoretical.” *Id.* at 22-23.³⁴

³⁴ In his arguments in the last section, Applicant purports to rely on “the reasons explained above and in Applicant’s prior filings incorporated herein” 15 TTABVUE 22. Such an incorporation-by-reference statement is a nullity. “Parties whose briefs purport to incorporate by reference arguments made during prosecution will be held to have failed thereby to present whatever arguments the incorporation statement purports to cover to the

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

The second *DuPont* factor “considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration’” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018). “This factor considers whether ‘the consuming public may perceive [the goods or services] as related enough to cause confusion about the source or origin of the goods or services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002)). “In analyzing the [goods], the Board considers ‘[t]he similarity or dissimilarity and nature of the [goods] as described in an application or registration.’” *In re OSF Healthcare Sys.*, No. 88706809, 2023 WL 6140427, at *4 (TTAB 2023) (quoting *In re Embiid*, No. 88202890, 2021 WL 2285576, at *10 (TTAB 2021)).³⁵

The goods or services “need not be identical or even competitive to find a likelihood of confusion.” *Id.* (quoting *In re Country Oven, Inc.*, No. 87354443, 2019 WL 6170483, at *2 (TTAB 2019)). “They need only be ‘related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [they] emanate from the same source.’” *Id.* (quoting *Country*

Board and will be deemed to have forfeited them.” *In re Princeton Equity Grp. LLC*, No. 97397212, 2025 WL 1638891, at *3 (TTAB 2025).

³⁵ Applicant acknowledges in his supplemental appeal brief that “[d]etermining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use.” 15 TTABVUE 18 (citations omitted).

Oven, 2019 WL 6170483, at *2 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (internal quotation omitted)).

The “Examining Attorney need not prove, and we need not find, similarity as to each [good] listed in the description of [goods]” in Class 25 in the application. *Id.* (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 WL 2953731, at *3 (TTAB 2025) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336 (CCPA 1981)).

The similarity of goods or services may be established based on (1) the language of the involved identifications of goods or services, which may show, on the face of the identifications, that the goods or services are literally or legally identical, or are otherwise intrinsically related, and (2) evidence of third-party uses or registrations, which may show that the identified goods or services are commonly offered by the same entity under the same mark. *See, e.g., OSF Healthcare*, 2023 WL 6140427, at *4. The involved identifications of goods establish similarity here.

The goods identified in the application are “Apparel, namely, clothing being tops, bottoms, headwear, footwear, all the foregoing goods to be used in relation to basketball; Basketball accessories, namely, headbands and wrist bands as clothing,” while the goods identified in the ’147 Registration are “Clothing, namely, shirts, hats, tops, pants.”³⁶

³⁶ Goods identified as “tops” appear in the identifications in the ’147 Registration and the application, and goods identified as “bottoms” and “headwear” appear in the identification in

“[W]e must construe the [goods] identified in the cited registration as broadly as reasonably possible to include all [goods] of the nature and type described therein,” *id.* at *5 (internal quotation and quotation marks omitted), and we must “resolve any ambiguities regarding their coverage in favor of the cited registrant given the presumptions afforded the registration under Section 7(b) of the Trademark Act.” *Id.* (internal quotation and quotation marks omitted). The goods identified in the ’147 Registration are not limited on the face of the identification to any particular type of clothing, so we must presume that they “include ‘all goods of the type identified, without limitation as to their nature or price,’” *Embiid*, 2021 WL 2285576, at *13 (quoting *Sock It To Me, Inc. v. Fan*, No. 91230554, 2020 WL 3027605, at *10 (TTAB 2020)), including “shirts, hats, tops, pants” “to be used in relation to basketball.”

As noted and discussed above, both identifications include “tops” and the “tops” broadly identified in the ’147 Registration encompass the more narrowly described “tops . . . to be used in relation to basketball” identified in the application. The goods identified in the application as “bottoms . . . to be used in relation to basketball” are equivalent to the goods identified in the ’147 Registration as “pants,” which we must deem to include pants “to be used in relation to basketball.” Finally, the goods identified in the application as “headwear . . . to be used in relation to basketball” are

the application. The Board may take judicial notice of dictionary definitions, including definitions from online dictionaries that exist in printed format or have fixed regular editions. *See, e.g., In re Nursecon, LLC*, No. 88052194, 2024 WL 5265079, at *10 n.64 (TTAB 2024) (citation omitted). We take judicial notice that in the context of clothing, a “bottom” is “the part of a garment worn on the lower part of the body,” a “top” is “a garment worn on the upper body,” and “headwear” is “apparel for the head.” MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on July 9, 2026).

equivalent to the goods identified in the '147 Registration as “hats,” which we must deem to include hats “to be used in relation to basketball.” The goods identified in the application and in the '147 Registration are thus legally identical in part.³⁷ The second *DuPont* factor strongly supports a conclusion that confusion is likely. *OSF Healthcare*, 2023 WL 6140427, at *9.

The third *DuPont* factor “considers ‘[t]he similarity or dissimilarity of established, likely-to-continue trade channels.’” *Detroit Athletic Co.*, 903 F.3d at 1308 (quoting *DuPont*, 476 F.2d at 1361). “Because the [goods] described in the application and the [‘147] [R]egistration are legally identical in part, we must presume that the channels of trade and classes of purchasers are the same as to those legally identical [goods].” *OSF Healthcare*, 2023 WL 6140427, at *9 (quoting *Monster Energy Co. v. Lo*, No. 91225050, 2023 WL 417620, at *8 (TTAB 2023) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012)). The third *DuPont* factor strongly supports a conclusion that confusion is likely.³⁸ *OSF Healthcare*, 2023 WL 6140427, at *9.

³⁷ In the section of Applicant’s supplemental appeal brief captioned “Applicant’s Goods and the Registrant’s Goods Present No Likelihood of Confusion to the Average Consumer,” Applicant argues only that his goods are “directed towards basketball players, basketball culture and industry, and are strongly related to basketball,” 15 TTABVUE 18, and that “where the marks are so distinct, as is the case here, there can be some similarity between the goods without risking consumer confusion.” *Id.* at 19. Applicant does not address the similarity of the goods based on the language of the respective identifications.

³⁸ Applicant does not address the third *DuPont* factor per se except to the extent that he argues in his supplemental appeal brief that he “provided ample evidence that [his] goods were marketed specifically to the basketball industry, whereas marketing for Registrant’s goods appeared non-existent,” 15 TTABVUE 20, that “use of the BRECKIN ANKLES mark is a stark contrast from the marketing surrounding the Cited Mark, which Applicant notes cannot be found anywhere on the internet aside from the specimens provided in Registrant’s most recent filing and are therefore presumed to be only available through Registrant’s own specific, private trade channels,” *id.* at 20-21, and that “Registrant’s goods do not seem to be sold in any trade channel or marketplace nor have any marketing” *Id.* at 21. These

B. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, “we consider the ‘similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at *4 (quoting *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, No. 91270181, 2024 WL 1638376, at *5 (TTAB 2024) (quoting *In re Inn at St. John’s LLC*, No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (citation omitted), *aff’d per curiam*, 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). By the same token, dissimilarity in one of these elements may be sufficient to make marks that are similar or even identical in other elements dissimilar in overall commercial impression. *See, e.g., Coach Servs.*, 668 F.3d at 1368 (“[e]ven where the marks at issue are identical, or nearly identical, the Board has found that differences in connotation can outweigh visual and phonetic similarity.”) (citations 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

unsupported arguments based on claimed marketplace conditions miss the mark because the goods are legally identical.

between the parties.” *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *Coach Servs.*, 668 F.3d at 1368). “The focus is on the recollection of the average purchaser, who normally ‘retains a general rather than a specific impression of marks.’” *Id.* (quoting *In re i.am.symbolic, llc*, No. 85916778, 2018 WL 3993582, at *4 (TTAB 2018) (citations omitted)).

“[S]imilarity is not a binary factor, but is a matter of degree.” *St. Helena Hosp.*, 774 F.3d at 752 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003)). Where, as here, the involved goods are legally identical, a lesser degree of similarity between the marks is required for confusion to be likely. *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.”).

The involved marks are the cited composite word-and-design mark shown in the ‘147 Registration, which we reproduce again below:



and Applicant’s standard-character mark BRECKIN ANKLES.

Applicant argues generally that “the marks in their entirety differ significantly in each of the relevant elements (appearance, sound, connotation, and commercial impression), and as such are sufficiently distinct.” 15 TTABVue 5. According to Applicant,

[w]hile the marks . . . may share a **small** degree of phonetic similarity, the differences in their overall appearances and

commercial impressions alone outweigh this similarity. The spelling of “BRECKIN” as opposed to “BREKENS” and Applicant’s inclusion of “ANKLES” with Applicant’s specific term “BRECKIN” as opposed to the Cited Mark’s stylized “B” symbol create distinct visual and phonetic differences, especially as Applicant’s mark clearly and deliberately alludes to the well-known basketball/sports phrase “breaking ankles” while including an allusion to Applicant and basketball.

Id. at 6 (emphasis in bold here in italics and underscoring in Applicant’s supplemental appeal brief).

Applicant claims that the marks differ in appearance because of the presence of the plural word BREKENS and the stylized letter “B” in the cited mark, the presence of the word ANKLES in Applicant’s mark, and the fact that the words BREKENS and BRECKIN differ visually. *Id.* at 8-9. Applicant argues that the “visual differences alone generate the distinct connotation of Applicant’s BRECKIN ANKLES mark as being related to a competitive edge in the sport of basketball, visually and phonetically synonymous with the well-known phrase ‘breakin’ ankles’ or ‘breaking ankles,’” and that “the inclusion of the term ‘ANKLES’ transforms the meaning of the first term ‘BRECKIN’ from the possibility of indicating a singular person, and instead generates the connotation of a concept that expands beyond an individual person and into a realm of desirable competitive qualities in the game of basketball.” *Id.* at 9.

Applicant claims that the marks are different in sound because consumers would “read the [cited] mark as ‘Brekens B,’ which may have an ambiguous and varied pronunciations amongst consumers especially as the Registrant expressly indicated that ‘BREKENS’ does not have any meaning or significance in the industry in which the goods and/or services are manufactured/provided,” *id.* at 11-12, and that “[w]hen

spoken aloud, the phonetics of Applicant's BRECKIN ANKLES mark are intentionally and clearly similar to that of the popular 'breaking ankles' phrase used in basketball and sports, informing consumers to relate Applicant's mark with the 'breaking ankles' concept in basketball" *Id.* at 12. Applicant concludes that "[t]his phonetic suggestion is entirely absent in the Cited Mark, and the auditory impressions of the marks are therefore different and not likely to be confused." *Id.*

With respect to meaning, Applicant argues that the marks have "different connotations and evoke distinct meanings in the minds of consumers" because "Applicant's BRECKIN ANKLES mark strongly implies the well-known basketball concept 'breakin ankles' with a creative incorporation of Applicant's identity as basketball player," while "the Cited Mark does not allude to anything (not even a name), which is explicitly stated in the record of the Cited Mark," and "does not mean or suggest anything outside of its own brand in association with its goods and services [sic]." *Id.* at 14 (record citations omitted). Applicant further argues that the Examining Attorney

continues to dismiss the significance of term "ANKLES" in Applicant's BRECKIN ANKLES mark, even in light of evidence that the significant inclusion of the term "ANKELS" [sic] informs consumers of how to interpret the unitary mark as a whole, strongly alludes to a well-known concept in Applicant's industry and basketball culture, and should not be dissected out of the mark for the sake of comparison as it carries **at least** equal importance as the first term in the mark.

Id. at 17 (emphasis in bold here in italics in Applicant's supplemental appeal brief).

The Examining Attorney responds that

[t]he wording “BRECKIN” in the applied-for mark is closely similar in appearance and pronunciation to a singular form of the wording “BREKENS” in the registered mark. The evidence shows that both “BRECKEN” (phonetically equivalent to a singular form of “BREKENS” in the registered mark) and “BRECKIN” (in the applied for mark) are proper names meaning “freckled”. . . . Applicant’s evidence shows that the wording “BRECKIN” in its [sic] mark is the proper name of applicant’s son, Brekin Riess. . . . Applicant’s evidence also shows “BREKEN” (the singular form of “BREKENS” in the registered mark) used as the first names of “Breken Coup”, “Breken Brezden” and “Breken Randall”. . . . Therefore, “BRECKIN” in the applied-for mark and “BREKENS” in the registered marks are similar in connotation as persons’ names.

17 TTABVUE 3.

The Examining Attorney further argues that “the word ‘ANKLES’ is disclaimed in the application, leaving ‘BRECKIN’ as the more distinctive wording in the applied-for mark,” and that “[b]ecause the more distinctive wording in the applied-for mark is closely similar to the whole word in the registered mark (represented by the initial ‘B’ therein), the marks are similar.” *Id.* at 4. The Examining Attorney rejects Applicant’s argument “that confusion is unlikely because applicant intends his mark to mean ‘BREAKING ANKLES’, a unitary phrase used in basketball to mean skillful movement that stymies or confounds opponents into stumbling and breaking their ankles,” arguing that “relevant consumers are unlikely to perceive applicant’s mark as applicant intends” and “are not familiar with the term ‘BREAKING ANKLES’,” that “‘BRECKIN’ is not pronounced ‘BREAKING’,” and that “relevant consumers have previously been exposed to a similar third-party use that is not associated with ‘BREAKING ANKLES’.” *Id.* According to the Examining Attorney, “[w]hile the

applicant has provided some evidence of use of the term ‘BREAKING ANKLES’ in sports contexts, he has not shown such widespread use of the term that purchasers of the registrant’s clothing goods (not limited to use for sports), would be familiar with it.” *Id.* at 4-5. She claims that the record evidence, including Applicant’s own materials and dictionary evidence, shows that “this wording is unlikely to have particular significance to the general clothing purchasing public,” *id.* at 5, and that “recognition of this term in the basketball community does not resolve likelihood of confusion in consumers of registrant’s clothing goods, identified without limitation as to use.” *Id.* at 5-6.

The Examining Attorney also claims that “Breckin Ankles” does not sound like “Breaking Ankles,” *id.* at 6, that “[b]ecause ‘BRECKIN’ does not sound like ‘BREAKING’, applicant’s mark is unlikely [to be] perceived as the term ‘BREAKING ANKLES’,” and that the “commercial impression conveyed by the applied-for mark, as shown by the evidence, is the proper name ‘BRECKIN’ followed by the descriptive word ‘ANKLES.’” *Id.*

The Examining Attorney further argues that “Breken’s” in the cited mark and “Breckin” in Applicant’s mark are both likely to be viewed as names, *id.* at 6-7, but that “whether or not ‘BREKEN’ [sic] and/or ‘BRECKIN’ is perceived as a proper name, the marks are similar because these wordings are confusingly similar and the applicant’s mark does not convey the meaning that applicant intends.” *Id.* at 7. She also claims that “Breken’s” is the dominant portion of the cited mark, *id.* at 8, and suggests that “Breckin” is the dominant portion of Applicant’s mark. *Id.* at 9-10.

In his reply brief, Applicant reiterates that his mark BRECKIN ANKLES “is visually and phonetically identical to the popular basketball phrase ‘breakin ankles’” because the “‘C’ in ‘BRECKIN’ in Applicant’s mark is easily perceived as an ‘A’ akin to ‘breakin’,” and “importantly, when Applicant’s BRECKIN ANKLES mark is spoken aloud, it strongly . . . resembles the phrase ‘breakin ankles.’” 18 TTABVUE 4. According to Applicant, the cited mark “creates no such connotation or commercial impression, and the respective marks are therefore sufficiently distinct such that confusion is not likely.” *Id.*

Applicant also reiterates that his mark “presents dual connotations of alluding to the popular basketball phrase and concept ‘breakin ankles’ as well as alluding to Applicant as a recognized basketball player in Applicant’s industry,” *id.*, while the cited mark “makes no such connotation and could be perceived as solely a name [or] the possessive/plural form of a name with a highly stylized ‘B’ functioning as an initial for a name.” *Id.* at 5. Applicant also downplays the significance of his disclaimer of ANKLES, arguing that consumers are unaware of the disclaimer and that his mark is a unitary mark notwithstanding the disclaimer, *id.* at 5-6, and he claims that the record is sufficient to show that the relevant consumers are familiar with the phrase “breaking ankles.” *Id.* at 6-8.

We begin our analysis by considering whether the involved marks have dominant portions that should be given greater weight in our comparison of the marks. Marks must be considered in their entirety, but “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for

rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *Detroit Athletic Co.*, 903 F.3d at 1305 (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)). As discussed above, the Examining Attorney argues that BREKENS is the dominant portion of the cited composite mark, and suggests that BRECKIN is the dominant portion of Applicant’s mark.

We agree with the Examining Attorney that BREKENS is the dominant portion of the cited composite mark. In marks “consisting of words and a design, the words are normally accorded greater weight because they are likely to make a greater impression upon purchasers, to be remembered by them, and to be used by them to request the goods.” *In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at *2 (TTAB 2018) (citations omitted). That general principle applies here, particularly because, as the Examining Attorney notes, the stylized letter “B” in the cited mark is an “initial that represents, and reinforces, the wording ‘BREKENS’ in that mark” 17 TTABVUE 8.

With respect to Applicant’s mark, Applicant, as required, disclaimed the exclusive right to use ANKLES apart from the mark as shown, thus conceding that the disclaimed word currently has no source-identifying significance in connection with the identified goods.³⁹ See, e.g., *Ye Mystic Krewe of Gasparilla*, 2025 WL 2953731, at

³⁹ As discussed above, Applicant argues in his reply brief that a “disclaimer is not necessary nor appropriate as the term ‘ankles’ in the mark is suggestive of a phrase unrelating to literal ‘ankles’, and Applicant’s mark is a unitary mark/slogan,” 18 TTABVUE 6, and that he “submitted the disclaimer [so] as to not claim the exclusive right to use the term ankles apart from Applicant’s unitary mark.” *Id.* When an applicant “argue[s] the merits of an examining attorney’s requirement for a disclaimer and, in the alternative, consent[s] to entry of the

*4 (citations omitted). The “non-source identifying nature of the word [ANKLES] and the disclaimer[] thereof constitute rational reasons for giving [ANKLES] less weight in the analysis.” *Detroit Athletic Co.*, 903 F.3d at 1305. We turn now to the required comparison of the marks in their entirety, giving greater weight in that comparison to the word BREKENS in the cited mark and the word BRECKIN in Applicant’s mark than to other elements of the marks.⁴⁰

We first consider the similarity or dissimilarity of the marks in appearance. Applicant’s mark is a standard-character mark and, as such, “may be presented in any font style, size or color, including the same font, size and color as the literal portion of [the cited] mark.” *Aquitaine Wine*, 2018 WL 1620989, at *5. We thus must assume that Applicant could display his BRECKIN ANKLES mark in the same font

disclaimer . . . submission of the disclaimer does not constitute a concession that the matter sought to be registered is not inherently distinctive or registrable.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) Section 1213.01(d) (May 2026) (citing *In re RiseSmart, Inc.*, No. 85050089, 2012 WL 6137597, at *1 (TTAB 2012)). Applicant did not follow that course during prosecution, and on appeal he merely “continues to express the inappropriateness of the disclaimer,” while “admit[ting] the disclaimer was made to satisfy the Examiner’s request” and that it “is not the subject of the instant Appeal” 15 TTABVue 9 n.3. Under the circumstances, we must deem the disclaimer to reflect Applicant’s concession that the word ANKLES is not inherently distinctive for the goods identified in the application, which include “footwear.”

⁴⁰ Although the word ANKLES has been disclaimed in Applicant’s mark, “confusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed.” *Detroit Athletic Co.*, 903 F.3d at 1304-05 (quoting *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1243 (Fed. Cir. 2004) and citing *Nat’l Data Corp.*, 753 F.2d at 1059 (“The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO.”)). As a result, we must “consider [Applicant’s] mark ‘in its entirety, including the disclaimed portion.’” *Id.* at 1305 (quoting *Viterra*, 671 F.3d at 1367). This is particularly significant here because, as discussed below, the record shows that the slang phrase “breaking ankles,” and the adjectival phrase “ankle-breaking,” refer to maneuvers by athletes, including basketball players, that cause their defenders to stumble and figuratively break their ankles. December 17, 2024 Response to Office Action at 46-49.

style and size in which the word BREKENS appears in the cited mark, as shown again below:

BREKENS

*Id.*⁴¹

Even assuming such a depiction of the mark BRECKIN ANKLES, however, we find that the dissimilarities of the marks in appearance outweigh their similarities. Although the dominant word BRECKIN in Applicant's mark may resemble the word BREKENS in the cited mark, the presence of the word ANKLES in Applicant's mark makes the marks, in their entireties, slightly dissimilar in appearance.

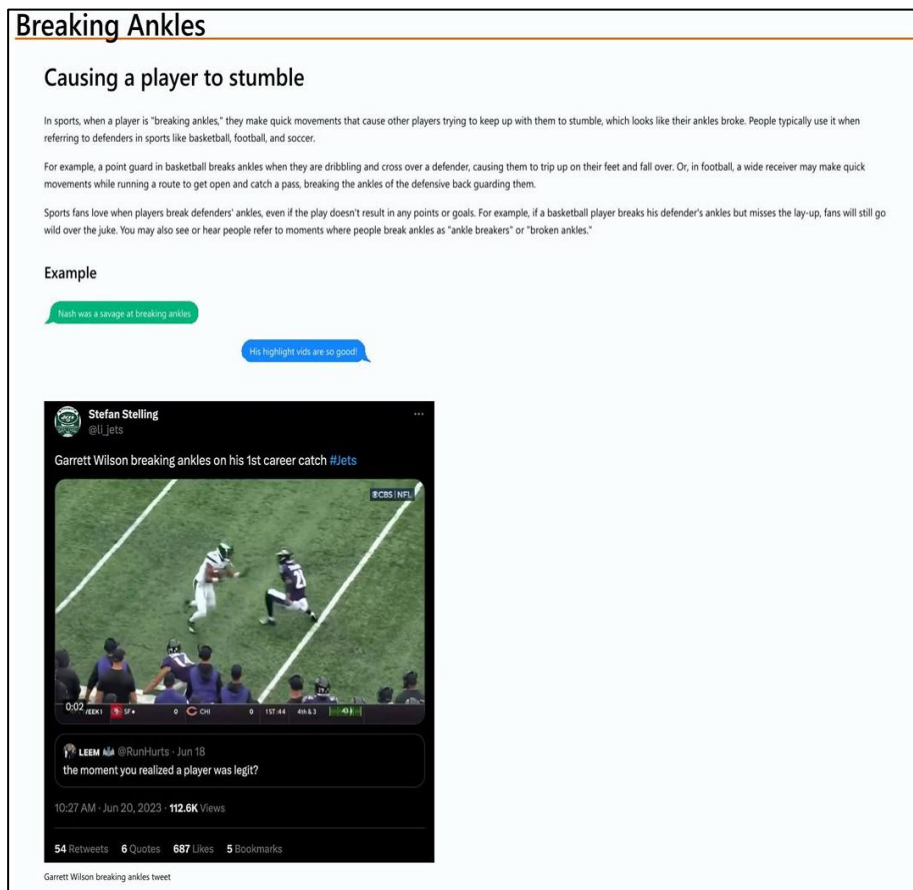
With respect to sound, we agree with the Examining Attorney that the word BRECKIN, standing alone, likely "is not pronounced 'BREAKING'." 17 TTABVue 4. "There is no correct pronunciation of a trademark that is not a recognizable word." *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1331-32 (Fed. Cir. 2014) (citation omitted). BRECKIN, standing alone, is not a "recognizable word" in the sense that it does not appear in any of the English-language dictionaries in the record other than as a name of Irish origin,⁴² but "[a]bsent evidence to the contrary, we must

⁴¹ We do not similarly assume that Applicant's mark could be used with the stylized letter "B" that appears in the cited mark, however, because "when we are comparing a standard character mark to a word + design mark for Section 2(d) purposes, we will consider variations of the depictions of the standard character mark **only with regard to** 'font style, size, or color' of the 'words, letters, numbers, or any combination thereof.'" *Aquitaine Wine*, 2018 WL 1620989, at *6 (citing *Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 1353 (Fed. Cir. 2011); *Viterra*, 671 F.3d at 1363-64) (emphasis in bold here in italics in *Aquitaine Wine*).

⁴² September 19, 2024 Office Action at 12 (nameopia.com). The record shows that "Breckin" is the first name of Applicant's son, June 19, 2025 Request for Reconsideration at 31-35, 39-48, but there is nothing on the face of the mark BRECKIN ANKLES that associates it with young Mr. Riess, or with anyone else with the name "Breckin." *Cf. Embiid*, 2021 WL 2285576,

consider all reasonable possibilities” for the pronunciation of BRECKIN as part of Applicant’s mark BRECKIN ANKLES when it is verbalized in its entirety. *Look Cycle Int’l v. Kunshan Qiyue Outdoor Sports Goods Co.*, No. 92079409, 2024 WL 373958, at *10 (TTAB 2024) (citing *StonCor*, 759 F.3d at 1332).

The record shows that consumers of clothing items “to be used in relation to basketball” and “basketball accessories” are likely to be familiar with the phrase “breaking ankles,” which is defined on the website at slang.net as follows:

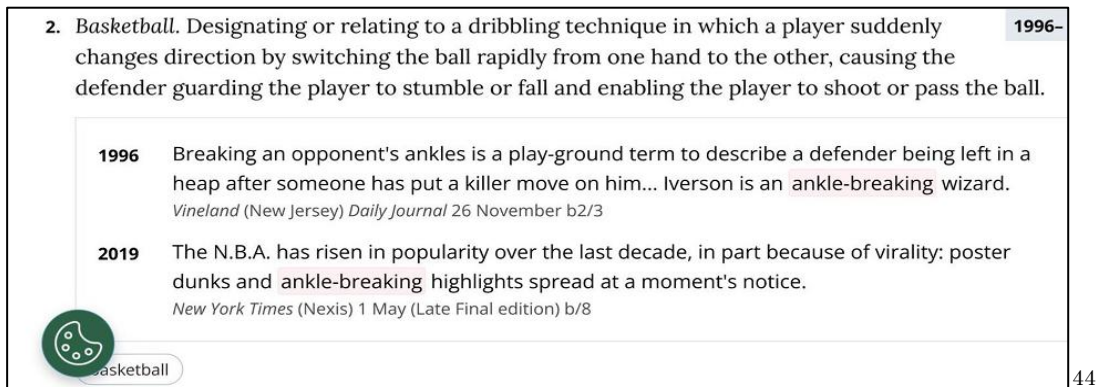


at *6-9 (finding that nothing on the face of the mark TRUST THE PROCESS associated it with NBA star Joel Embiid).

⁴³ December 17, 2024 Response to Office Action at 46.

The webpage gives the following example of “breaking ankles”: “[A] point guard in basketball breaks ankles when they are dribbling and cross over a defender, causing them to trip up on their feet and fall over.”

More formally, the OXFORD ENGLISH DICTIONARY (oed.com) defines the adjectival phrase “ankle-breaking” in the context of basketball as follows:



The results of a search on the Google search engine for the term “breckin ankles” included links to videos captioned “NBA - The Art of Breaking Ankles” and “NBA ‘Broken Ankles Moments.’”⁴⁵

⁴⁴ *Id.* at 48. The Examining Attorney dismisses this evidence because the webpage also estimates that “ankle-breaking typically occurs fewer than 0.01 times per million words in modern written English.” *Id.* at 49. 17 TTABVUE 5. The possible infrequent use of “breaking ankles” in written English by the public at large does not preclude the possibility that consumers of clothing items “to be used in relation to basketball” and “basketball accessories,” a sports-oriented subset of the general public, are familiar with the phrase. In that regard, the Examining Attorney acknowledges that “this term may have particular meaning relative to basketball,” but argues that “recognition of this term in the basketball community does not resolve likelihood of confusion in consumers of registrant’s clothing goods, identified without limitation as to use.” *Id.* at 5-6. Under the forward-confusion theory advanced by the Examining Attorney, which involves the scenario “when consumers believe that [goods or services] bearing the junior mark . . . came from or were sponsored by, the senior mark holder,” *In re FCA US, LLC*, No. 85650654, 2018 WL 1756431, at *16 (TTAB 2018), the understanding of the term by members of what the Examining Attorney calls the “basketball community”—those most likely to purchase Applicant’s clothing items “to be used in relation to basketball” and “basketball accessories”—is what matters.

⁴⁵ June 19, 2025 Request for Reconsideration at 32-33.

We find that for consumers of clothing items “to be used in relation to basketball” and “basketball accessories” sold under Applicant’s mark BRECKIN ANKLES, the pronunciation of the mark as a whole as a slang variant of “breaking ankles,” through the dropping of the “g” in the gerund “breaking,” which involves a common practice in colloquial American English speech, is a reasonable possibility.

The dominant word BREKENS in the cited mark also has no certain pronunciation, but it is a reasonable possibility that it will sound similar to the word BRECKIN in Applicant’s mark when BREKENS is verbalized. As with appearance, however, we must consider the aural similarity of the marks in their entireties. We find that BREKENS and BRECKIN ANKLES are slightly dissimilar in sound due to the presence in Applicant’s mark of the word ANKLES, which causes the mark as a whole to be likely to be spoken and heard as something akin to “Breakin’ Ankles.”

Finally, and most importantly, with respect to meaning, the cited mark would likely be understood to be a name, particularly given the presence of the initial “B” in close proximity to BREKENS in the mark,⁴⁶ while Applicant’s mark would likely be understood as a slang variant of the phrase “Breaking Ankles” when used in connection with clothing items “to be used in relation to basketball” and “basketball

⁴⁶ Applicant makes much of the fact that the registrant stated in prosecution of the application that matured into the ’147 Registration that “BREKENS’ does not have any meaning or significance in the industry in which the goods and/or services are manufactured/provided.” 15 TTABVue 14 (citing December 17, 2024 Response to Office Action at 7, 32-34). But like disclaimers, statements of this sort made during prosecution are unknown to the relevant purchasing public, *cf. Aquitaine Wine*, 2018 WL 1620989, at *7 (quoting *In re Clorox Co.*, 578 F.2d 305, 307 (CCPA 1978) (“the locus of potential confusion is [not] in the files of the PTO”)), and we must consider the perception of the mark based on what is shown in the drawing.

accessories.” For the reasons discussed above, it is unlikely that in the context of Applicant’s BRECKIN ANKLES mark as a whole, the lead word BRECKIN would be understood by consumers of basketball-related goods to be a name even though the record shows that it is one.⁴⁷ Instead, the mark as a whole connotes to consumers of clothing items “to be used in relation to basketball” and “basketball accessories” that they will be able to figuratively break their opponents’ ankles while playing basketball wearing Applicant’s goods. We find that the marks are quite dissimilar in connotation and commercial impression.

The marks, considered in their entirety, are somewhat dissimilar in appearance and sound, and quite dissimilar in connotation and commercial impression. The first *DuPont* factor strongly supports a conclusion that confusion is not likely.

C. Balancing the *DuPont* Factors

“The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument; ‘explain the results of that weighing;’ and discuss ‘the weight [we] assigned to the relevant factors.’” *In re Jimenez*, No. 97551823, 2025 WL 3126703, at *8 (TTAB 2025) (quoting *Charger Ventures*, 65 F.4th at 1379). “No mechanical rule determines likelihood of confusion,

⁴⁷ With respect to his mark’s meaning, Applicant states in his briefs that BRECKIN ANKLES involves not just a play on the phrase “breaking ankles,” but also “a creative incorporation of Applicant’s identity as [a] basketball player,” 15 TTABVUE 14; a reference to “Applicant themselves [sic] as a recognized basketball player publicly featured in the industry,” *id.* at 18; “creatively incorporating Applicant’s competitive persona,” *id.* at 20; “an association with Applicant and Applicant’s close relation to basketball,” 18 TTABVUE 4, and a reference to “Applicant [and] Applicant’s abilities as a recognized basketball player.” *Id.* at 7. But as with the alleged association of the mark with young Breckin Riess, there is nothing on the face of the mark that associates it with Riess père.

and each case requires weighing of the facts and circumstances of the particular mark.” *Id.* (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346 (Fed. Cir. 2010)). “[T]he weight afforded to each factor depends on the circumstances’ and ‘[a]ny single factor may control a particular case.” *Id.* (quoting *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 998 (Fed. Cir. 2020)).

The first two key *DuPont* factors point us in different directions. The key second factor, and the third factor, both strongly support a conclusion that confusion is likely because the goods, channels of trade, and classes of consumers are legally identical in part. As discussed above, the identical nature of the goods also reduces the degree of similarity between the marks that is required for confusion to be likely.

At the same time, however, Applicant’s BRECKIN ANKLES mark and the cited mark  “are different in their entirety, weighing heavily against finding a likelihood of confusion.” *Jimenez*, 2025 WL 3126703. The key first *DuPont* factor thus strongly supports a conclusion that confusion is not likely.

A single *DuPont* factor may be dispositive of the issue of likelihood of confusion, *Kellogg Co. v. Pack’em Enters., Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) (finding no legal error in the Board’s ruling “that the dissimilarity of ‘the marks in their entirety’ itself made it unlikely that confusion would result from the simultaneous use of the marks”), and we conclude here that “the respective marks overall are different enough that even when used on [legally] identical . . . [goods] in [identical] trade channels, consumers likely would not be confused into believing that they

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emanate from the same source.” *Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 WL 4925901, at *38 (TTAB 2024).

Decision: The refusal to register is reversed.