Before Masiello, Hightower, and Larkin, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Solene, Inc. ("Applicant") has filed an application\(^1\) to register on the Principal Register the mark HOMMAGE À NOS PAIRS in standard characters for "wine." The Application states that the English translation of the mark is "homage to our mentors."

The Trademark 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, as used...
in connection with Applicant’s goods, so resembles the registered mark HOMAGE in standard characters as to be likely to cause confusion, or to cause mistake, or to deceive. The cited mark is registered for “wines.”\(^2\) When the refusal was made final, Applicant appealed. Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register the mark.

1. **Evidentiary issues.**

Neither the Examining Attorney nor Applicant made any evidence of record. However, Applicant in its brief asks that we consider the definition of “homage” in <urban.dictionary.com>.\(^3\) The Examining Attorney has objected on grounds of timeliness.\(^4\)

The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), aff’d, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). However, when a party requests that the Board take judicial notice of appropriate matter, it should provide a copy of the matter in question. TBMP §§ 704.12(b), 1208.04 (2016). In this case, Applicant supplied only the URL for the dictionary definition. The content of websites is changeable and evanescent. Consequently, the Board will not utilize a URL to access a website to consider whatever content may appear there. *In re Future Ads LLC*, 103 USPQ2d 2 Reg. No. 3149466, issued September 26, 2006. Section 8 affidavit accepted; Section 15 affidavit acknowledged; renewed.

\(^3\) Applicant’s brief at 2, 4 TTABVUE 6.

\(^4\) Examining Attorney’s brief, 6 TTABVUE 5-6.
1571, 1572 (TTAB 2012); In re HSB Solomon Associates, LLC, 102 USPQ2d 1269, 1274 (TTAB 2012). In any event, in this case even if Applicant had supplied a copy of the <urbandictionary.com> definition, we would not take judicial notice of it. Urban Dictionary (urbandictionary.com) is a collaborative slang dictionary that permits visitors to the website to submit or edit definitions, and there is no indication that there is any fixed edition of it. It is not a “source whose accuracy cannot reasonably be questioned,” Fed. R. Evid. 201(b)(2), and as such it is not appropriate matter for judicial notice. Accordingly, the Board considers definitions from Urban Dictionary so long as the non-offering party has an opportunity to rebut that evidence by submitting other definitions that may call into question the accuracy of the particular Urban Dictionary definitions. In re Star Belly Stitcher, Inc., 107 USPQ2d 2059, 2062 n.3 (TTAB 2013). That was not the case here.

In order to give proper consideration to this case, the Board will take judicial notice of the following dictionary definitions:

**Homage:**

- n ... 3 a : reverential regard : RESPECT, DEFERENCE ... esp : respect shown by external action : OBEISANCE ... b : flattering attention : TRIBUTE

  vt to pay homage to

**Webster’s Third New International Dictionary** 1082 (1993).

**Hommage:** ... n.m. Homage; respect, veneration; ... faire hommage à quelqu’un, to do homage to someone; ... rendre ses hommages à quelqu’un, to pay one’s respects to someone.

**Pair:** ... a ... Equal, even. ... n.m. Peer; equal; ... fellow ...

**Casell’s French-English English-French Dictionary** 395, 513 (1951).
2. **Refusal under Section 2(d).**

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion as set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

(a) **The goods; trade channels; customers.**

We will first consider the similarity or dissimilarity of the goods as identified in the application and the cited registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014); *Octocom Sys. Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The goods are identical, as both the application and the cited registration cover wine. Accordingly, the *du Pont* factor regarding the similarity or dissimilarity of the goods heavily favors a finding of likelihood of confusion.

As Applicant’s goods are legally identical to those of Registrant, we must presume that they move in the same channels of trade and are offered to the same classes of consumers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994). Accordingly, the *du Pont* factors
relating to the similarity or dissimilarity of trade channels and classes of customers favor a finding of likelihood of confusion.

(b) The marks.

We now turn to a consideration of the similarity or dissimilarity of the marks at issue in their entireties as to appearance, sound, connotation and commercial impression. See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). “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, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted). Moreover, marks must be considered in light of the fallibility of memory. In re St. Helena Hosp., 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014). While we consider each mark in its entirety, 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 that our ultimate conclusion rests upon a comparison of the marks in their entireties. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). “Indeed, this type of analysis appears to be unavoidable.” Id. We bear in mind that when the goods at issue are identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods.
Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

The two marks are similar in appearance by virtue of the close similarity between Registrant’s mark HOMAGE and the first word of Applicant’s mark, HOMMAGE. The additional letter M in HOMMAGE is a very slight distinction that might well be overlooked by customers. The additional wording À NOS PAIRS in Applicant’s mark is a clear point of difference in appearance between the marks. The Examining Attorney urges that the word HOMMAGE in Applicant’s mark is the dominant portion of the mark because it is the first word, citing Palm Bay Imports, 73 USPQ2d at 1692 (finding the word “veuve” to be the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark). We agree that the position of the word HOMMAGE gives it salience in Applicant’s mark. Moreover, in displays of Applicant’s mark, the word HOMMAGE, as the first word, might logically be emphasized over the other wording of the mark.5

With respect to the sound of the two marks, Applicant argues that the French word “hommage” is pronounced with emphasis on the second syllable while the English word “homage” is pronounced with emphasis on the first syllable. However, “there is no correct pronunciation of a trademark, and consumers may pronounce a

5 We appreciate that the sole specimen of use in the record shows Applicant’s mark as a subsidiary brand, subordinate to the more dominant mark CLOS SOLÈNE, and shows the mark on a single line and in lettering of uniform size and color. However, Applicant seeks to register its mark in standard characters, such that its use of the mark would not be limited to any particular display. See In re Viterra Inc., 101 USPQ2d at 1910; Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). Accordingly, we must consider that Applicant may use its mark as the primary mark on its product and in other graphic styles.
mark differently than intended by the brand owner.” In re Viterra, 101 USPQ2d at 1912. In this case, consumers might mistakenly perceive HOMAGE as a French term and give it a French pronunciation, even though the correct French spelling has a double “M.” Thus, Registrant’s mark might, in the marketplace, be pronounced the same as the first word of Applicant’s mark. The additional wording À NOS PAIRS in Applicant’s mark is a point of difference in sound.

With respect to meaning or connotation, the French-English dictionary indicates that “homage” is the English equivalent of “hommage.” Both words mean “respect.” As the dictionaries show, both words denote a form of respect that one shows to or “pay[s]” to another. Applicant’s mark, unlike Registrant’s mark, expressly identifies the object of this respect, namely NOS PAIRS, which may mean “our mentors,” as Applicant has stated, or “our peers” or “fellows,” as the dictionary suggests. Although Applicant’s mark is the more specific of the two, Registrant’s mark also includes the suggestion of respect paid to someone.

Considering the marks in their entireties, we find that the similarities outweigh the differences and that overall the marks create similar commercial impressions. The additional wording in Applicant’s mark, À NOS PAIRS, although absent from the Registrant’s mark, is nonetheless consonant with the meaning of Registrant’s mark and its suggestion of respect paid to someone. As such, it could be perceived as an extension or subcategory of Registrant’s HOMAGE brand. We find the differences between the two marks insufficient to distinguish them. The du Pont factor of the
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similarity or dissimilarity of the marks accordingly weighs in favor of a finding of likelihood of confusion.

(c) Absence of actual confusion.

Applicant contends that its mark has been in use since June 2011, and that Applicant is not aware of any instances of actual confusion with Registrant’s mark. The record of this case contains no information regarding the extent to which Applicant has used and promoted its mark, or of the extent of use of Registrant’s mark. Thus, there is no basis upon which to determine whether there have been meaningful opportunities for actual confusion to occur in the marketplace. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000); Gillette Canada Inc. v. Ranir Corp., 23 USPQ2d 1768, 1774 (TTAB 1992). The uncorroborated statement that there are no known instances of actual confusion is of little or no evidentiary value in this ex parte proceeding. In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003). Accordingly, the du Pont factor of the length of time during and conditions under which there has been contemporaneous use without evidence of actual confusion is considered neutral.

(d) Conclusion.

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant du Pont factors. In view of the similarities between the marks, the identity of the goods, and the presumption that

6 Applicant’s brief at 2, 4 TTABVUE 6.
the goods will travel through the same trade channels to the same classes of customers, we find that Applicant’s mark so resembles the cited registered mark as to be likely to cause confusion, mistake or deception as to the source of Applicant’s goods.

**Decision:** The refusal to register is affirmed.