

From: Stoides, Katherine

Sent: 6/11/2015 8:54:31 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 79133133 - FAVORIT - N/A - EXAMINER BRIEF

Attachment Information:

Count: 3

Files: favorite.pronunciation.jpg, sporting.def.jpg, 79133133.doc

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 79133133

MARK: FAVORIT



CORRESPONDENT ADDRESS:

JOHN ALUMIT

ALUMIT IP

135 S JACKSON ST STE 200

GLENDALE, CA 91205

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

TTAB INFORMATION:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: FAVORIT CZECHOSLOVAKIA s.r.o.

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

john@alumitip.com

EXAMINING ATTORNEY'S APPEAL BRIEF

INTERNATIONAL REGISTRATION NO. 1168046

This is an appeal from a final refusal to register FAVORIT (stylized) for use on goods, in relevant part, in Classes 12 and 28, specifically:

“bicycles, namely road bikes, mountain bikes, cross bikes, trekking bikes, racing bikes, sports bikes, freestyle bikes, children’s bikes, and construction bikes; bicycle parts, namely frames, wheels, forks, handlebars, mudguards, saddles, seat posts, chains, gears, pedals, and rims for bicycle wheels; luggage nets for vehicles; handlebar attachments, namely bicycle mirrors, brakes, and bells; bicycle cranks, tyres, casings for pneumatic tires, inner tubes for bicycles, tubeless tyres for bicycles; repair equipment for inner tubes, namely, tire repair patches, adhesive rubber patches for repairing inner tubes, baskets adapted for bicycles, water bottle holders for bicycles, stands for bicycles, bicycle racks for vehicles” and

“playing cards; stationary exercise bicycles; sports training apparatus, namely portable stationary cycles and spring hand grips for bicycles; toy scooters; manually-operated exercise equipment for physical fitness purposes; body building apparatus, body training apparatus, sports training apparatus, namely pitching machine.”

The mark has been refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because it is likely to cause confusion with the registered mark FAVORITES (in typed form) used on “mail order catalogs featuring jewelry, hardware, sporting goods, toys and games, food and home furnishings, namely, furniture, appliances, housewares, home accessories, domestics, textile goods, electrical appliances, and electronics.”¹

STATEMENT OF FACTS

On 25 July 2013, the applicant Favorit Czechoslovakia applied to register FAVORIT (stylized) on goods classified in Classes 12, 25 and 28² on the Principal Register under Trademark

¹ U.S. Registration No. 2661941, registered 17 December 2002, renewed on 25 April 2012.

² Goods specifically identified as “Bicycles of all types such as road bikes, mountain bikes, cross bikes, trekking bikes, racing bikes, sports bikes, freestyle bikes, children bikes, construction bikes, parts of bicycles and bicycle equipment such as frames, wheels, forks, handle bars, mudguards, luggage nets for vehicles, saddles, seat posts, chains, gears, switches, pedals, wires, rims, bicycle mirrors, handlebar attachments, brakes, bells, cranks, tyres, casings for pneumatic tires, inner tubes, tubeless tyres and other accessories and spare parts for bicycles, repair equipment for inner tubes, adhesive rubber patches for repairing inner tubes, bicycle baskets, cycle handle bars, carriers for bottles, stands for bicycles, bicycle racks for vehicles” in Class 9, as “Clothing, footwear, headgear, clothing of all kinds, especially for sport, thermal clothing for sports, clothing and

Act Section 66(a). In the first Office Action issued on 4 August 2013, the examining attorney refused registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), citing U.S. Registration No. 2661941, with respect to Classes 12 and 28 only. Requirements relating to the applicant's entity, identification of goods and description of mark statement were also made.³ In addition to addressing the outstanding informalities, the applicant presented arguments in favor of registration, focusing on the weakness of the term "favorite," and variations thereof, in its response of 7 February 2014.⁴ In the Office Action issued on 15 November 2015, the refusal under Section 2(d) citing 2661941 was made final, and the requirement for an acceptable identification of goods was also made final. On 2 December 2014, the applicant filed a Request for Reconsideration successfully amending the identification of goods and reiterating its basic argument that because the terms at issue are weak there is no likelihood of confusion in this instance. In the Office Action issued on 21 January 2015, the final refusal under Section

textiles for winter sports, cycling and cyclo-tourism, such as cycling trousers and shorts, T-shirts, jerseys, jackets, hats and scarves, cycling gloves, cycling raincoats, cycling shoes, clothing for ski, ski jackets and ski trousers, men's, women's and children's clothing, blouses, dresses, suits, trousers, skirts, jackets, shirts, vests, coats, overcoats, raincoats, turtlenecks, sweaters, pullovers, casual clothing and clothing for sports, bathing suits, beach clothes, shorts, T-shirts, sweatpants, track suits, sweatshirts, windproof clothing, sports jackets, men's, women's and children's underwear, night wear, pyjamas, dressing gowns, overalls, bodies (lingerie), men's briefs, pants, boxer shorts, petticoats, panties, bras, brassieres, bustiers, corsets, garters, undershirts, singlets, chemises, slips (undergarments), cotton and elastic T-shirts, leggings, knit leggings, socks, hosiery, silon tights, jeans wear, leather wear, fur clothing, fur imitation clothing, leather imitation clothing, ties, neckties, bow ties, scarves, shawls, gloves, mittens, hats, caps, headbands, berets, visors, swimming caps, men's, women's and children's footwear, home footwear, sports footwear, tennis shoes, high boots, Wellington boots, moccasins, low shoes, slippers, loafers, mules, carpet slippers, sandals, ski footwear, snowboarding footwear, waterproof clothing, wet suits" in Class 25, and as "Games, toys, gymnastic and sports articles included inn this class, playing cards, sports equipment and accessories including equipment and accessories for camping, hiking and mountaineering, stationary bikes, exercise bicycles (stationary), training pedalling devices, training spring devices, exercise and sports gear excluding ice hockey gear, scooters, sports equipment of all kinds, sports games equipment, sports gear for leisure time, fitness recondition and regeneration equipments included in this class, including summer and winter sports gear, fitness and body building apparatus, body training apparatus, sports simulators, games, board games, indoor games, beach games, swimming pool games, billiard tables, fishing equipment, archery implements, children's swimming pools, inflatable swimming pools included in this class, swimming webs (flippers), flippers for swimming, skates, hockey pucks, sports sticks, sports blades, sports protective equipment, protective pads, balls, skis, water skis, surf skis, surfboards, ball games equipment, tennis rockets, hand-gliders (toys), snowboards, skateboards, sledges, games and toys included in this class" in Class 28.

³ Earlier-filed Application Serial No. 85042202 was also referenced as a potential bar to registration in the Office Action issued on 4 August 2013. However, as the earlier-filed application was ultimately abandoned, reference to it as a potential bar to registration was later withdrawn.

⁴ The applicant referenced and attached third-party registrations consisting of marks comprised in part of the term "favorite" or "favorites" and screenshots of third-party use of marks comprised in part of these terms as well.

2(d) was maintained, with a clarification that the refusal was restricted to Classes 12 and 28 only.⁵ The applicant has filed an appeal.

ISSUE ON APPEAL

Whether the applicant's mark FAVORIT (stylized) used on goods classified in Classes 12 and 28, goods generally referred to as sporting goods, parts therefor, toys and games, is likely to cause confusion with the cited registered mark FAVORITES (in typed form) used on mail order catalogs featuring inter alia "sporting goods, toys and games."

ARGUMENT

A likelihood of confusion exists because similar marks, FAVORIT and FAVORITES, are used on related goods, specifically on goods classified in Classes 12 and 28, goods generally referred to as sporting goods, parts therefor, toys and games, and on mail order catalogs featuring inter alia "sporting goods, toys and games."

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of

⁵ Evidence in support of the relatedness of goods was included.

record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. See *In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

A. Related Goods/Same Channels of Trade

At the outset, as no arguments with respect to the instant goods and channels of trade thereof have been made, it is presumed that the applicant concedes that the goods are closely related and that the channels of trade thereof are the same.

The instant refusal pertains specifically to the applicant's goods identified in Classes 12 and 28. Specifically, these goods are identified as follows:

Class 12: "bicycles, namely road bikes, mountain bikes, cross bikes, trekking bikes, racing bikes, sports bikes, freestyle bikes, children's bikes, and construction bikes; bicycle parts, namely frames, wheels, forks, handlebars, mudguards, saddles, seat posts, chains, gears, pedals, and rims for bicycle wheels; luggage nets for vehicles; handlebar attachments, namely bicycle mirrors, brakes, and bells; bicycle cranks, tyres, casings for pneumatic tires, inner tubes for bicycles, tubeless tyres for bicycles; repair equipment for inner tubes, namely, tire repair patches, adhesive rubber patches for repairing inner tubes, baskets adapted for bicycles, water bottle holders for bicycles, stands for bicycles, bicycle racks for vehicles" and

Class 28: “playing cards; stationary exercise bicycles; sports training apparatus, namely portable stationary cycles and spring hand grips for bicycles; toy scooters; manually-operated exercise equipment for physical fitness purposes; body building apparatus, body training apparatus, sports training apparatus, namely pitching machine.”

The evidence of record in this instance supports the close relationship of the goods as it consists of a representative sample of third-party marks registered for use in connection with mail order catalogs and goods featured therein -- the same or similar goods as those of both applicant and registrant in this case.⁶ This evidence shows that the goods listed therein, namely mail order catalogs and goods featured therein, are of a kind that may emanate from a single source under a single mark. *See In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

Furthermore, with respect to applicant’s and registrant’s goods, the question of likelihood of confusion is determined based on the description of the goods stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

Absent restrictions in an application and/or registration, the identified goods are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*,

⁶ Office Action issued on 21 January 2015.

671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Additionally, unrestricted and broad identifications are presumed to encompass all goods and/or services of the type described. See *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

In this instance, the applicant's specific goods -- bikes and parts therefore, sports training apparatus, exercise equipment, body building apparatus and body training apparatus -- can also be referred to generally as "sporting goods." The attached dictionary definition of "sporting" shows that "sporting goods" are goods "relating to sports, or used in sports activities."⁷ Moreover, the applicant's specifically identified toy scooters and playing cards are presumed to be included in the broad wording "toys and games." Accordingly, the applicant identifies specific types of goods that are presumably included in the registrant's mail order catalogs featuring *inter alia* "sporting goods, toys and games." The goods at issue are therefore closely related and are presumed to travel in the same channels of trade.

B. Similar Marks

The applicant's FAVORIT (stylized) and the cited registered mark FAVORITES (in typed form) are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d

⁷ *MacMillan Dictionary*© Macmillan Publishers Limited 2009–2015. The TTAB is respectfully requested to take judicial notice of the attached dictionary definition of "sporting." See *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719 (Fed. Cir. 1988); *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983); *In re Analog Devices, Inc.*, 6 USPQ2d 1808 (TTAB 1988); affirmed in unpublished opinion, 10 USPQ2d 1879 (Fed. Cir. 1989); and *In re Anonia Associates, Inc.*, 223 USPQ 740 (TTAB 1984).

1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

The fact that the cited mark comprises the plural form of the term fails to obviate the similarity of the marks for the following reasons. First, slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomm. & Elec. Ass'n*, 222 USPQ 350, 351 (TTAB 1983); see *In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012). Second, an applied-for mark that is the singular or plural form of a registered mark is essentially identical in sound, appearance, meaning, and commercial impression, and thus the marks are confusingly similar. *Weider Publ'ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014) (finding the singular and plural forms of SHAPE to be essentially the same mark) (citing *Wilson v. Delaunay*, 245 F.2d 877, 878, 114 USPQ 339, 341 (C.C.P.A. 1957) (finding no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark); *In re Pix of Am., Inc.*, 225 USPQ 691, 692 (TTAB 1985) (noting that the pluralization of NEWPORT is “almost totally insignificant” in terms of likelihood of confusion among purchasers); *In re Sarjanian*, 136 USPQ 307, 308 (TTAB 1962) (finding no material difference between the singular and plural forms of RED DEVIL)). And third, the marks are not to be compared for differences in sight, in sound, and in meaning, as the applicant asserts. Rather, in a likelihood of confusion determination, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re White*

Swan Ltd., 8 USPQ2d 1534, 1535 (TTAB 1988); *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); TMEP §1207.01(b).

Nevertheless, the applicant argues there is no likelihood of confusion in this instance because (1) the marks are not sufficiently the same, (2) the term “favorite,” the phonetic equivalent of the applicant’s mark and the plural derivation thereof, are weak, and (3) for the first time argues in the instant appeal, FAVORIT communicates the meaning of a combination of two terms FAVOR and IT, rather than the meaning of its phonetic equivalent “favorite.” These arguments fail to be persuasive for the following reasons.

For the reasons enumerated above, the marks are sufficiently similar. The marks only differ in the slight stylization of the lettering in the instant mark and in the addition of the letters “ES” to the cited mark. These differences fail to sufficiently distinguish the marks for the following reasons. First, a mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the marks could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”). Second, the test of likelihood of confusion is not whether the marks can be distinguished

when subjected to a side-by-side comparison. The question is whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *In re Davia*, 110 USPQ2d 1810, 1813 (TTAB 2014); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049, (TTAB 2014); *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); TMEP §1207.01(b).

And third, the applicant is advised that the fallibility of the average purchaser's memory must be considered. Given the substantial similarities in the appearance and meaning of the marks, the average purchaser is not likely to distinguish the marks based on such small differences. The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The issue is whether the marks create the same overall impression. *Visual Information Institute, Inc. v. Vicon Industries Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP section 1207.01(b). Furthermore, the Board has specifically addressed the issue of the fallibility of the average consumer's memory in *The Barbers, Hairstyling for Men & Women, Inc. v. The Baraber Pole, Inc.*, 204 USPQ 403 (TTAB 1979), wherein it stated:

[P]urchasers and prospective purchasers...generally do not have the opportunity to compare the respective marks on a side-by-side basis,

and, thus, the test which we must apply in determining likelihood of confusion is not whether the marks are distinguishable upon a side-by-side comparison, but whether they so resemble one another as to be likely to cause confusion and this necessarily requires us to consider the fallibility of the memory of the average purchaser, who normally retains but a general impression of trademarks over a period of time, and would not recollect minute details as to specific differences.

204 USPQ at 409. Therefore, in this instance, the marks are overwhelmingly similar as they both simply consist of a phonetic variation of the term “favorite.”

Likewise, the applicant’s argument that there is no likelihood of confusion in this instance because marks at issue comprise solely of a weak term is not persuasive. The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed “weak” or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods and/or services. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982); TMEP §1207.01(b)(ix); see *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974). This protection extends to marks registered on the Supplemental Register. TMEP §1207.01(b)(ix); see, e.g., *In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978); *In re Hunke & Jochheim*, 185 USPQ 188 (TTAB 1975).

In support of its argument that the term “favorite” is weak, thereby obviating a likelihood of confusion in this instance, the applicant references third-party registrations comprising of a

variation of this term. The referenced third-party registrations only consist of marks that combine additional wording to the terms “favorite” or “favorites.” Likewise, the referenced third-party websites only consist of marks that include the terms “favorite” or “favorites” along with additional wording. This evidence however fails to demonstrate that marks comprised solely of the terms “favorite” and/or “favorites” are so numerous that these marks are rendered weak. The additional wording in the referenced marks serves to create a meaning very different than that of marks comprised solely of either “favorite” or “favorites.” Consequently, the applicant’s assertion that the marks in this instance are weak is unsubstantiated. Indeed, FAVORIT, the phonetic equivalent of the singular form of “favorite,” without additional wording and FAVORITES, also without additional wording, create a single, unique meaning – a meaning that is similar. Therefore, without any relevant evidence of dilution and consequent weakness, there is a likelihood of confusion in this instance.

Moreover, the applicant’s argument that its mark FAVORIT communicates the meaning of a combination of two terms FAVOR and IT rather than the meaning of its phonetic equivalent “favorite” also fails to be persuasive. This assertion is unsubstantiated. As the attached dictionary definition states, the pronunciation of “favorite” is “‘feiv(ə)rit.’”⁸ This sounds the same as the applicant’s FAVORIT mark. Furthermore, there is no correct pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark. *See Embarcadero Techs., Inc. v. RStudio, Inc.*, 105 USPQ2d 1825, 1835 (TTAB 2013) (quoting *In re Viterra Inc.*, 671 F.3d 1358, 1367, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012); *In re The Belgrade Shoe Co.*, 411 F.2d 1352, 1353, 162 USPQ 227, 227 (C.C.P.A. 1969)); TMEP §1207.01(b)(iv). The marks in question could clearly be pronounced the

⁸ *MacMillan Dictionary* © Macmillan Publishers Limited 2009–2015. The TTAB is respectfully requested to take judicial notice of the attached dictionary definition of “favorite.” See *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719 (Fed. Cir. 1988); *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983); *In re Analog Devices, Inc.*, 6 USPQ2d 1808 (TTAB 1988); affirmed in unpublished opinion, 10 USPQ2d 1879 (Fed. Cir. 1989); and *In re Anonia Associates, Inc.*, 223 USPQ 740 (TTAB 1984).

same; such similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv).

And finally, the overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but 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, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

CONCLUSION

The refusal to register the applicant's FAVORIT (stylized) on the basis of likelihood of confusion, citing the registered mark FAVORITES (typed form), is strongly supported in light of the demonstrated similarity of marks, the presumably conceded close relationship of the applicant's identified goods in Classes 12 and 28 and the registrant's mail order catalogs featuring, inter alia, sporting goods, toys and games, and the resulting presumption that the channels of trade thereof are the same. The examining attorney therefore respectfully requests the Board to affirm the refusal to register the mark FAVORIT (stylized) with respect to Classes 12 and 28 under Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Respectfully submitted,

/Katherine Stoides/

Examining Attorney

Law Office 101

571-272-9230

katherine.stoides@uspto.gov (unofficial use only)

Ronald R. Sussman

Managing Attorney

Law Office 101



AdChoices
Ad covers the page
Stop seeing this ad

AdChoices
Ad covers the page
Stop seeing this ad

favorite - definition and synonyms ★★



Show less

ADJECTIVE [ONLY BEFORE NOUN] Pronunciation /feɪv(ə)rɪt/

Contribute to our Open Dictionary

your favorite person or thing of a particular type is the one you like the best

His favorite pastimes were hunting and golf.
Stephen King is one of my favorite writers.

least/most favorite: *Once More is my least favorite song ever.*

Synonyms and related words

Loved, liked or wanted very much: *Marmite, dear, desirable...*

Explore Thesaurus

Related words

- favorite NOUN
- favorite VERB
- hot favorite NOUN
- the odds-on favorite PHRASE
- a happy/favorite hunting ground PHRASE

[What are red words?](#)

[Using the thesaurus](#)

Did you know?
 Click any word in a definition or example to find the entry for that word

AdChoices
Ad covers the page
Stop seeing this ad



BuzzWord

bit rot

when electronic information is lost because the software or devices needed to read it are no longer available

[BuzzWord Article](#)

More BuzzWords

- bitcoin e-waste transliterate
- BYOD e-read skeuomorphic
- infobesity QR code solutionism

[BuzzWord archive](#)

Open Dictionary

troll factory

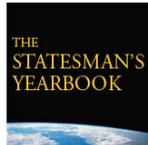
a company that pays its employees to write online comments in favour or against somebody or something posing as ordinary Internet users

[add a word](#)

More submissions

- kheer sandscape dal makhani
- bundler kudzu memory-hole
- gamify conlanger collywobbles

[view entries](#)



Word of the Day 📖

samba

a fast dance from Brazil

Blog

A must for anyone with an interest in the changing face of language. The Macmillan Dictionary blog explores English as it is spoken around the world today.

[global English and language change from our blog](#)

IZOD AMERICAN CHINO PANT \$24.99

SHOP NOW

American definition and synonyms of favorite from the online English dictionary from Macmillan Publishers Limited.





AdChoices
 Ad covers the page
 Stop seeing this ad

sporting - definition and synonyms

Show less

ADJECTIVE [Pronunciation](#) /'spɔ:tɪŋ/ [Using the thesaurus](#)

[Contribute to our Open Dictionary](#)

- relating to sports, or used in sports activities

sporting goods
a sporting event

Synonyms and related words

General words relating to sports and games:
caxirola, Paralympic, vuvuzela

[Explore Thesaurus](#)
- competing in a fair way and showing respect for other players

a sporting gesture

Synonyms and related words

Fair and reasonable: fair, reasonable, natural...

[Explore Thesaurus](#)

Related words

sport VERB

sporting chance NOUN

Did you know?
Click any word in a definition or example to find the entry for that word

DERIVED WORD

sportingly ADVERB

Synonyms and related words

Fair and reasonable: fair, reasonable, natural...

[Explore Thesaurus](#)



This is the American English definition of sporting. [View British English definition of sporting.](#)
Change your default dictionary to British English.
[View the pronunciation for sporting.](#)

AdChoices
 Ad covers the page
 Stop seeing this ad



BuzzWord

bit rot

when electronic information is lost because the software or devices needed to read it are no longer available

[BuzzWord Article](#)

More BuzzWords

bitcoin e-waste transliterate
BYOD e-read skeuomorphic
infobesity QR code solutionism

[BuzzWord archive](#)

Open Dictionary

troll factory

a company that pays its employees to write online comments in favour or against somebody or something posing as ordinary Internet users

[add a word](#)

More submissions

kheer sandscaps dal makhani
bundler kudzu memory-hole
gamify corlanger collywobbles

[view entries](#)

Word of the Day

samba

a fast dance from Brazil

Blog

A must for anyone with an interest in the changing face of language. The Macmillan Dictionary blog explores English as it is spoken around the world today.

[global English and language change from our blog](#)



American definition and synonyms of sporting from the online English dictionary from Macmillan Publishers Limited

