

This Opinion is Not a  
Precedent of the TTAB

Mailed: March 8, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re SHELL CASE LIMITED*

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Serial No. 79273053

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Alexander S. Lazouski, of LAZOUSKI IP LLC,  
for SHELL CASE LIMITED.

Siddharth Jagannathan, Trademark Examining Attorney, Law Office 114,  
Nicole Nguyen, Managing Attorney.

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Before Shaw, Goodman and Larkin,  
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

SHELL CASE LIMITED (“Applicant”) seeks registration on the Principal Register

of the stylized mark **Shell-Case** for goods identified as:

Bags, namely, all-purpose carrying bags, leather bags for packaging, leather bags for component packaging, leather bags for shipment of merchandise and components, all-purpose carrying bags for salespeople, bags for climbers in the nature of all-purpose carrying bags, all purpose carrying bags for use by campers, bag for sports, backpacks, suitcases, in International Class 18.<sup>1</sup>

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<sup>1</sup> Application Serial No. 79273053 was filed on July 5, 2019 as a request for extension of

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the previously-registered mark SHELLVCASE, in standard characters, for, inter alia, "Bags adapted for laptops," in International Class 9.<sup>2</sup>

When the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed briefs.<sup>3</sup> We affirm the refusal to register.

### I. Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) ("*DuPont*"). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the

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protection of International Registration No. 1500998 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a).

<sup>2</sup> Registration No. 4862929, issued December 1, 2015, Section 8 affidavit filed and accepted.

<sup>3</sup> Applicant's January 28, 2021 response to the Examining Attorney's refusal of registration is attached to Applicant's brief. This material is duplicative of matter already in the record and the Board strongly discourages the practice of attaching previously submitted evidence to briefs. *In re Michalko*, 110 USPQ2d 1949, 1950 (TTAB 2014); *In re SL&E Training Stable Inc.*, 88 USPQ2d 1216, 1220 n.9 (TTAB 2008) (attaching as exhibits to brief material already of record requires Board to determine whether attachments had been properly made of record and adds to the bulk of the file); *ITC Entm't Grp. Ltd. v. Nintendo of Am. Inc.*, 45 USPQ2d 2021, 2022-23 (TTAB 1998) (submission of duplicative papers is a waste of time and resources, and is a burden on the Board). Applicant can simply cite to the record evidence it intends to rely upon for statements and arguments made in its brief.

similarities between the goods and the similarities between the marks. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (not all of the *DuPont* factors are relevant to every case, only factors of significance to the particular mark need be considered); *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (“[T]he factors have differing weights”); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”).

A. The nature and similarity or dissimilarity of the goods, the established, likely-to-continue trade channels, and the classes of purchasers.

We begin with the similarity of the respective goods. Applicant’s goods identified in the application include a variety of bags, including: “all-purpose carrying bags,” “leather bags for component packaging,” “all-purpose carrying bags for salespeople,” “backpacks,” and “suitcases.” Registrant’s goods include “Bags adapted for laptops.” To establish the relatedness of the respective goods, the Examining Attorney introduced webpage excerpts from the following bag and luggage manufacturers showing that they market a variety of bags, including Applicant’s bags, backpacks

and suitcases as well as Registrant's bags adapted for laptops, all under their respective house marks:

- SOLO NEW YORK – offering a variety of carrying bags, luggage, and cases or backpacks adapted for laptops.<sup>4</sup>
- KENSINGTON – offering laptop cases and bags as well as a variety of luggage and carrying bags.<sup>5</sup>
- TARGUS – offering a variety of laptop bags as well as totes, briefcases, and sleeves.<sup>6</sup>
- FOSSIL – offering variety of backpacks and bags including those adapted for laptops.<sup>7</sup>
- TUMI – offering variety of luggage, backpacks, totes, money clips and bags including those adapted for laptops.<sup>8</sup>

We find that the goods are related inasmuch as Applicant's broadly-worded "all-purpose carrying bags" could include Registrant's more specialized bags adapted for the purpose of carrying laptops. *See In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of goods necessarily encompasses Registrant's narrowly identified goods"). The goods are thus in-part legally identical. Based on the Examining Attorney's web site excerpts, we

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<sup>4</sup> Office Action of December 10, 2019, TSDR 5-13.

<sup>5</sup> *Id.* at 14–19.

<sup>6</sup> *Id.* at 20-25.

<sup>7</sup> Office Action of February 18, 2021, TSDR 3-9.

<sup>8</sup> *Id.* at 10-16.

also find that Applicant's other bags, backpacks and suitcases and Registrant's bags adapted for laptops are related because they are commonly manufactured and sold by the same company under the same mark.

Applicant nevertheless argues that its goods and Registrant's goods are not related:

In the instant case, the differences in the parties' respective goods are more than sufficient to avoid confusion to consumers. The cited registration covers bags adapted for laptops. In contrast, Applicant provides carrying bags for various purposes (for example, bags for climbers, bags for shipment of merchandise and components, suitcases. However, none of Applicant's goods (being in class 18) are not [sic] specifically designed to carry laptops or compute [sic] hardware.<sup>9</sup>

This argument is unpersuasive. It is well settled that the involved goods "need not be identical or even competitive to find a likelihood of confusion." *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at \*4 (TTAB 2019) (citing *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000)). "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 [the goods] emanate from the same source.'" *Country Oven, Inc.*, 2019 USPQ2d 443903, at \*4 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation omitted)).

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<sup>9</sup> Applicant's Br., p. 8, 4 TTABVUE 9.

Here, the goods are in-part legally identical and, as noted above, the Examining Attorney's web site evidence establishes that backpacks, suitcases, and bags are often made by the same companies and sold under the same house marks as Registrant's bags adapted for laptops. Although Applicant argues that none of its goods are specifically designed to carry laptops or computer hardware, the identification of goods is sufficiently broad so as to encompass these goods. When considering the similarity of the goods, trade channels, and classes of consumers, we must make our determinations based on the goods as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). Applicant's identification of goods contains no language excluding products specifically designed to carry laptops or computer hardware.

Moreover, the fact that the USPTO classifies Applicant's bags, backpacks and suitcases and Registrant's bags adapted for laptops in different classes does not establish that the goods are unrelated under Trademark Act Section 2(d). The proper classification of goods is a purely administrative determination unrelated to the determination of likelihood of confusion. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) ("Classification is solely for the 'convenience of Patent and Trademark Office administration,' 15 U.S.C. § 1112, and 'is wholly irrelevant to the issue of registrability under section 1052(d), which makes no reference to classification[.]'" (quoting *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 29

USPQ2d 1771, 1774 (Fed. Cir. 1993)); TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1207.01(d)(v) (July 2021).

Because there are no restrictions as to trade channels or prospective consumers in the application or cited registration, and Applicant's and Registrant's goods are in-part legally identical, we must presume that the identical goods travel in the same channels of trade to the same consumers. *See Cai*, 127 USPQ2d at 1801; *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers). Further, we find that the Examining Attorney's web page excerpts establish that Applicant's other bags, backpacks and suitcases and Registrant's bags adapted for laptops also are offered in the same trade channels and to the same classes of purchasers, namely consumers seeking bags, backpacks and suitcases from bag and luggage manufacturers. *DuPont*, 177 USPQ at 567.

The *DuPont* factors regarding the similarity of the goods, channels of trade, and classes of purchasers strongly favor a finding of a likelihood of confusion.

B. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

We next consider and compare the appearance, sound, connotation and commercial impression of the marks in their entirety. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The proper test regarding similarity "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.” *Cai*, 127 USPQ2d at 1801 (quoting *Coach Services*, 101 USPQ2d at 1721) (internal quotation marks and citation omitted)). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d*, 777 F. App’x 516 (Fed Cir. 2019), (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The in-part legally identical nature of Applicant’s and Registrant’s goods reduces the degree of similarity between the marks that is necessary for confusion to be likely. *See, e.g., Viterra*, 101 USPQ2d at 1912; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010).

Applicant’s mark is **Shell·Case**. The registered mark is SHELLVCASE. The Examining Attorney argues that the marks are similar because “Applicant’s Mark does not create a distinct commercial impression from the Registered Mark because it contains the identical first and last words in the Registered Mark and does not add any wording that would distinguish it from the Registered Mark.”<sup>10</sup> The Examining Attorney argues further that “the compared marks could clearly be pronounced in a similar manner as a consumer[.]”<sup>11</sup> In the alternative, according to the Examining Attorney, “even if the presence of the letter “V” in the Registered Mark causes the Registered Mark to be pronounced in a slightly different manner, . . . this

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<sup>10</sup> Examining Attorney’ Br., 6 TTABVUE 7.

<sup>11</sup> *Id.* at 6 TTABVUE 8.



would not alter the similarity of the marks or the analysis above. Slight differences in the sound of similar marks will not avoid a likelihood of confusion.”<sup>12</sup>

Applicant argues that “[w]hen viewed in their entirety, the Applicant’s mark SHELL CASE is readily distinguishable from the cited mark SHELVCASE [sic] in terms of sight, meaning and commercial impression.”<sup>13</sup> Based on this misreading of Registrant’s mark, Applicant argues that the marks are distinguishable:

In addition to the marks look[ing] and sound[ing] different, SHELL CASE and SHELVCASE [sic], obviously, have different meanings. . . . Specifically, Applicant’s mark is an obvious and clever play with the meaning of the term “shell” suggesting its bags, just like shells of mollusks or turtles, are hard and rigid. . . . On the contrary, Registrant’s SHELVCASE [sic] mark - being a combination of terms “SHELVE” (which means “place or arrange on a shelf”) and “CASE” - clearly suggests that due to its size its laptop bags may be placed on a shelf.<sup>14</sup>

We find that this argument regarding connotation and commercial impression is unpersuasive. Registrant’s mark is SHELLVCASE, not SHELVCASE. Although it is conceivable that consumers could perceive Registrant’s mark as a combination of “shelve” and “case,” we see little reason why consumers would understand the SHELLV portion of Registrant’s mark to suggest “shelve.” “Shellyv” is not a word in the English language, but “shell” is. We find it more likely that they would perceive the mark as “shell-v-case,” that is, a combination of “shell” and “case” separated by

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<sup>12</sup> *Id.* at 6 TTABVUE 7.

<sup>13</sup> Applicant’s Br., p. 4, 4 TTABVUE 5.

<sup>14</sup> *Id.* at 4-5, 4 TTABVUE 5-6.

the arbitrary letter “v.” Thus, the connotation or commercial impression of the marks could be the same: a combination of “shell” and “case.”

Regarding the sound of the marks, it is well settled that “[t]here is no correct pronunciation of a trademark that is not a recognized word,” *StonCor Group, Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014) (citing *In re Belgrade Shoe Co.*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969)). Regardless of whether the cited mark will be pronounced as “shelve-case,” as Applicant suggests, or “shell-v-case,” both pronunciations are very similar to Applicant’s SHELL-CASE, differing only by one short middle syllable.

The slight difference in pronunciation between the marks is not enough to distinguish them and create dissimilar marks. *See Glenwood Labs., Inc. v. Am. Home Prods. Corp.*, 455 F.2d 1384, 173 USPQ 19 (CCPA 1972) (MYOCHOLINE for a medicinal preparation for treatment of dysphagia, abdominal distention, gastric retention, and urinary retention is similar to MYSOLINE for an anti-convulsant drug); *Alfacell v. Anticancer Inc.*, 71 USPQ2d 1301, 1305 (TTAB 2004) (ONCASE v. ONCONASE: “As seen and spoken, this middle portion may be missed by many of the relevant purchasers.”); *In re Total Quality Grp. Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999) (“Applicant’s mark STRATEGYN and registrant’s mark STRATEGEN are phonetic equivalents and differ by only one letter.”).

Regarding the appearance of the marks, presentation of a mark in stylized characters generally will not avoid likelihood of confusion with a mark in standard characters because the word portions could be presented in the same manner of

display, in this case, in a way that maximizes the similarity or minimizes the dissimilarity between the marks. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (“Since Registrant’s mark is a standard character mark, we must consider that the literal elements of the mark (the words and the letters) may be presented in any font style, size or color, including the same font, size and color as the literal portions of Applicant’s mark.”); *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1823 (TTAB 2015) (marks in standard character form “could be used in any typeface, color, or size, including the same stylization actually used or intended to be used by the other party, or one that minimizes the differences or emphasizes the similarities between the marks.”). For example, Registrant’s mark could be displayed as SHELLvCASE, similar to the way in which the small hyphen separates SHELL and CASE in applicant’s mark. *See Aquitaine*, 126 USPQ2d at 1186 (“Registrant could choose to present CHATEAU in a much smaller size type or in a different font or color than the word LAROQUE, so that the latter term would be just as visually dominant as it is in Applicant’s mark.”). Accordingly, the fact that the Applicant’s Mark is stylized does nothing to distinguish the marks.

In sum, when we consider the marks in their entirety, we find they are similar in appearance, sound, connotation and commercial impression, *Palm Bay*, 73 USPQ2d at 1692, particularly considering the lesser degree of similarity required for confusion to be likely between marks that are used in connection with in-part identical goods.

This *DuPont* factor also favors a finding of likelihood of confusion.

C. Conclusion

We find that Applicant's goods are in-part legally identical and otherwise related to Registrant's goods; the channels of trade and classes of consumers are the same; and Applicant's mark is similar to the cited mark in appearance, sound, connotation and commercial impression. We conclude that there is a likelihood of confusion between Applicant's mark, **Shell-Case**, and the cited standard-character mark, SHELLVCASE, for the respective goods.

**Decision:** The refusal to register Applicant's mark is affirmed.