

This Opinion is not a  
Precedent of the TTAB

Mailed: March 16, 2023

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

*In re Speymalt Whisky Distributors Ltd.*

Serial No. 79296030

George A. Smith Jr. of Howson & Howson LLP  
for Speymalt Whisky Distributors Ltd.

Justin S. Wickersham, Trademark Examining Attorney, Law Office 116,  
Elizabeth F. Jackson, Managing Attorney.

Before Cataldo, Shaw and Johnson,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Speymalt Whisky Distributors Ltd., filed an application to register on the Principal Register the mark THE CAIRN (in standard characters) identifying “Spirits and liqueurs; whisky and whisky-based liqueurs; but insofar as whisky and

whisky-based liqueurs are concerned, only Scotch whisky and Scotch whisky-based liqueurs” in International Class 33.<sup>1</sup>

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 following cited registered marks, owned by the same entity:

CAIRN BREWING (in standard characters, “BREWING” disclaimed) identifying “beer” in International Class 32;<sup>2</sup> and



(“KENMORE WASHINGTON BREWING” disclaimed)

identifying “beer” in International Class 32 and “taproom services, taproom services featuring craft beer” in International Class 43.<sup>3</sup>

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board.<sup>4</sup> We affirm the refusal to register.

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<sup>1</sup> Application Serial No. 79296030 was filed on August 10, 2020 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141h(a), seeking an extension of protection of International Reg. No. 1555754, issued on August 10, 2020.

<sup>2</sup> Reg. No. 5341052 issued on the Principal Register on November 21, 2017.

<sup>3</sup> Reg. No. 5551168 issued on the Principal Register on August 28, 2018.

<sup>4</sup> All citations to documents contained in the Trademark Status & Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). References to the briefs on appeal refer to the Board’s TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, if applicable. *See, e.g., New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, \*2 n.1 (TTAB 2020).

## **I. Evidentiary Matter**

Applicant submitted three pages of evidence as exhibits to its appeal brief.<sup>5</sup> To the extent these exhibits are duplicative of evidence previously submitted during prosecution, we need not and do not give this redundant evidence any consideration. Further, any of the evidence submitted with Applicant's appeal brief that was not previously submitted during prosecution is untimely and will not be considered.<sup>6</sup>

## **II. Likelihood of Confusion**

We base our determination of likelihood of confusion under Trademark Act Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors enunciated in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015); see also *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019).

We have considered each *DuPont* factor that is relevant, and have treated other factors as neutral. See *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010) ("Not all of the *DuPont* factors are relevant to every case,

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<sup>5</sup> 4 TTABVue 12-14.

<sup>6</sup> The proper procedure for an applicant or examining attorney to introduce evidence after an appeal has been filed is to submit a written request with the Board to suspend the appeal and remand the application for further examination. See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). See also TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.02 (June 2022) and authorities cited therein.

and only factors of significance to the particular mark need be considered.”); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *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”). Two key considerations are the similarities between the marks and the relatedness of the goods. *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.”); *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1672 (TTAB 2018).

**A. Focus on Reg. No. 5341052**

For purposes of our likelihood of confusion analysis, we will focus on the mark CAIRN BREWING identifying “beer” in cited Reg. No. 5341052 because when that mark is considered vis-à-vis the applied-for mark and identified goods, it is that mark that is most likely to support a finding of likelihood of confusion. *See, e.g., In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (“[I]f there is no likelihood of confusion between applicant’s mark and MAX in typed form, then there would be no likelihood of confusion with the MAX and dot design mark.”).

## **B. The Goods, Channels of Trade, and Classes of Customers**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). “This factor considers whether ‘the consuming public may perceive [the respective goods or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard*, 62 USPQ2d at 1004).

In support of the refusal of registration, the Examining Attorney introduced with the December 14, 2020 first Office Action<sup>7</sup> and January 14, 2022 final Office Action<sup>8</sup> printouts from the following third-party websites, offering and advertising, under the same trademarks and tradenames, various beer, whiskeys<sup>9</sup> and other liquors.

- Lexington Brewing & Distilling Co. (offering whiskey and beer);
- Southern Tier Brewing Co. and Southern Tier Distilling (offering whiskey, bourbon, vodka, gin, and beer);
- Bent Brewstillery (offering spirits, gin, rum, whiskey, and beer);

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<sup>7</sup> At 10-59.

<sup>8</sup> At 36-72.

<sup>9</sup> “Whiskey is an alternate spelling of “whisky,” but both refer to “a liquor distilled from fermented wort (such as that obtained from rye, corn, or barley mash).” <https://www.merriam-webster.com/dictionary/whiskey>, accessed March 15, 2023.

- Brickway Brewery & Distillery (offering whisky and beer);
- Ellison Brewery & Spirits (offering beer, whiskey, vodka, gin, and rum);
- Mother Earth Brewing and Mother Earth Spirits (offering gin, whiskey, and beer);
- New Holland Brewing Co. (offering beer, bourbon, whiskey, gin, and vodka);
- Dogfish Head Brewery and Distillery (offering beer, rum, gin, vodka, and whiskey); and
- Rogue (offering beer, whiskey, gin, and vodka).

This evidence demonstrates that at least these third parties offer both Applicant's goods and the goods identified in the cited registration under the same trademarks and trade names.

The Examining Attorney also introduced into the record with her January 14, 2022 final Office Action,<sup>10</sup> copies of ten use-based, third-party registrations for marks identifying, inter alia, beer and various types of liquor including whiskey. The following examples are illustrative:

- Reg. No. 4978543 for the mark BREWVO (in standard characters) identifying various beers and flavor-infused whiskey;
- Reg. No. 5553256 for the mark BROKEN TRAIL SPIRITS + BREW and design identifying various beers and whiskey; and
- Reg. No. 6049890 for the mark NATIVE AMERICAN BREWING (in standard characters) identifying beer and distilled spirits.

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<sup>10</sup> At 7-35.

As a general proposition, although use-based, third-party registrations alone are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless may have some probative value to the extent they may serve to suggest that the goods are of a kind that emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). In this case, the totality of the website and third-party registration evidence demonstrates that consumers would readily expect that beer and liquors including whiskey could emanate from the same source.

Applicant “does not concede that all alcoholic beverages, e.g., spirits, beer, and wine, are related goods.”<sup>11</sup> However, Applicant offers little additional argument and no evidence to traverse a finding that on this record, Applicant’s whiskey, spirits and liquor and the beer identified in the cited registration are related for purposes of our likelihood of confusion determination. Clearly, there are distinctions between these alcoholic beverages. However, to support a finding of likelihood of confusion, it is not necessary that the goods be identical or even competitive. It is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such that they would be encountered by the same persons in situations that would give rise, because of the marks, to a mistaken belief that they originate

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<sup>11</sup> 4 TTABVUE 10.

from the same source or that there is an association or connection between the sources of the goods. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009). The evidence of record clearly establishes that beer and liquor may emanate from common sources.

With regard to the third *DuPont* factor, the similarity of the trade channels in which the goods are encountered, the above website evidence demonstrates that ten third parties provide beer, spirits, and liquor at their physical locations, i.e., through the same trade channels to the same purchasers. Further, we must base our likelihood of confusion determination on the basis of the goods as they are identified in the application and registration at issue. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); *In re William Hodges & Co., Inc.*, 190 USPQ 47, 48 (TTAB 1976). *See also Octocom*, 16 USPQ2d at 1787 (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed”). In other words, we may not limit or restrict Applicant’s broadly identified spirits, liqueurs and whiskey or the similarly identified beer in the cited registration by price point or quality, but rather we must consider both beer and liquor to include modestly priced beverages as well as more expensive, high-end varieties.

The evidence of record demonstrates that both Applicant’s goods and the registrant’s goods may be encountered by the same classes of consumers under the same marks in at least one common trade channel, i.e., the physical locations and



corresponding websites of beer and liquor producers and sellers. In addition, the identifications of goods in the cited registration and involved application do not recite any limitations as to the channels of trade in which the goods are or will be offered. In the absence of trade channel limitations on the goods offered under the applied-for and registered marks, we must presume that these goods are offered in all customary trade channels. *See Citigroup v. Capital City Bank Grp.*, 98 USPQ2d at 1261; *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

We find that the *DuPont* factors of the relatedness of the goods, channels of trade and consumers weigh in favor of likelihood of confusion.

#### **C. Strength of the Cited Mark / Number and Nature of Similar Marks**

We next evaluate the strength of the registered mark and the scope of protection to which it is entitled. The fifth *DuPont* factor is the “fame” or strength of the prior mark, and the sixth factor is the number and nature of similar marks in use for similar goods or services. *DuPont*, 177 USPQ at 567. In determining strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition. *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”).

Turning first to inherent strength, neither Applicant nor the Examining Attorney introduced definitions of the terms comprising the marks. Nonetheless, Applicant argues that some consumers would recognize “cairn” as denoting “a mound composed

of rocks”<sup>12</sup> and the Examining Attorney does not dispute this meaning.<sup>13</sup> There is no evidence that “cairn” possesses any meaning in relation to beer, spirits or liquor, aside from evoking the image of a mound of stones.

Thus, we find on this record that CAIRN BREWING appears to be an arbitrary term in connection with a mound of stones where the brewing of beer takes place. There is no evidence regarding the mark’s commercial or marketplace strength.

Applicant submitted copies of three third-party registrations consisting of “cairn” formative marks retrieved from a search of the USPTO’s Trademark Electronic Search System (TESS).<sup>14</sup>

- Reg. No. 3267272 for the mark ROCK CAIRN VINEYARD (“VINEYARD” disclaimed) (in standard characters) identifying wine;
- Reg. No. 3786139 for the mark FOUR CAIRN (in standard characters) identifying wines; and
- Reg. No. 4678630 for the mark STONE CAIRN identifying wine.

These registrations have limited probative value because the marks include additional wording not present in the cited CAIRN BREWING mark and they identify wine, not shown on this record to be related to the beer identified in the cited registration. *See Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686 (Fed. Cir. 2018) (Board must focus “on goods shown to be similar”);

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<sup>12</sup> 4 TTABVUE 9.

<sup>13</sup> 6 TTABVUE 5.

<sup>14</sup> July 11, 2022 Request for Reconsideration at 5-7.

*In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (disregarding third-party registrations for goods in other classes where the proffering party “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, ... supports a finding that registrants’ marks are weak with respect to the goods identified in their registrations”). *Cf. In re FabFitFun, Inc.*, 127 USPQ2d at 1674 n.11 (TTAB 2018).

Furthermore, the prosecution histories of the applications underlying these third-party registrations are not of record and we are unable to determine the examining attorneys’ decisions regarding the registrability thereof. “It has been said many times that each case must be decided on its own facts.” *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (internal citation omitted). Thus, the fact that the USPTO has allowed these registrations for marks only somewhat related to the marks at issue herein does not persuade us that the mark in the cited registration is weak.

As noted above, we find that the registered mark is arbitrary as applied to the identified goods. There is no evidence of probative third-party use; moreover, there is very limited evidence of third-party registrations of somewhat similar marks for products not shown to be related on this record. *Cf. Juice Generation, Inc. v. GS Enters LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015). We therefore find

that the registered mark is entitled to the broad scope of protection to which arbitrary and distinctive marks are shown. *See Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (stating that likelihood of confusion fame varies along a spectrum from very strong to very weak).

#### **D. The Marks**

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's mark and the registered mark in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion*, 110 USPQ2d at 1160; *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 USPQ2d at 1692. "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); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted). *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018).

"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). *See also Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016). Consumers may not

necessarily encounter the marks in proximity to one another and must rely upon their recollections thereof over time. *In re Mucky Duck Mustard*, 6 USPQ2d at 1468.

So long as we “analyze[] the marks as a whole[, i]t is not improper for the Board to determine that, ‘for rational reasons,’ ... [we] give ‘more or less weight ... to a particular feature of the mark[s]’ provided that ... [our] ultimate conclusion regarding ... likelihood of confusion ‘rests on [a] consideration of the marks in their entirety.’” *Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 2021 USPQ2d 35, \*2-3 (Fed. Cir. 2021) (citing *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1357 (Fed. Cir. 2000) and *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

The marks are similar in appearance and sound to the extent that they both include the term CAIRN. The addition of the wording BREWING in the registered mark modifies and draws further attention to CAIRN. BREWING contributes to the mark’s commercial impression, but is subordinate to CAIRN and fails to sufficiently distinguish the marks.

Furthermore, we note that CAIRN, the word which the marks share in common, and the only distinctive word in Applicant’s mark as well as the cited mark, is also the first word in the registered mark, and thus, most likely to be remembered by purchasers. *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[It is] a matter of some importance since it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.”). *See also Palm Bay Imports*, 73 USPQ2d at 1692 (“The presence of this strong

distinctive term as the first word in both parties' marks renders the marks similar, especially in light of the largely laudatory (and hence non-source identifying) significance of ROYALE.”).

We do not place much weight on the term THE in Applicant's mark. *See In re Narwood Prods, Inc.*, 223 USPQ 1034, 1034 (TTAB 1984) (“There is no doubt that the word portion of appellant's mark and the mark subject of the cited registration are virtually identical since both consist primarily of the term ‘music makers.’ The fact that the presentation in the mark of the cited registration is as a single word rather than two words is obviously insignificant in determining the likelihood of confusion. So also is the fact that appellant's mark, as it is sought to be registered, includes the definite article ‘the’”). *Accord Jay-Zee, Inc. v. Hartfield-Zodys, Inc.*, 207 USPQ 269 (TTAB 1980) (“Since the psychological and marketing impact of petitioner's mark in its earlier version clearly was derived from the word ‘IMAGE,’ the omission of the word ‘THE’ (the definite article serving merely to emphasize ‘IMAGE’) from the later version did not interrupt the continuity of use”); and *U. S. Nat'l Bank of Oregon v. Midwest Sav. and Loan Ass'n*, 194 USPQ 232, 236 (TTAB 1977) (“The definite article ‘THE’ likewise adds little distinguishing matter because the definite article most generally serves as a means to refer to a particular business entity or activity or division thereof, and it would be a natural tendency of customers in referring to opposer's services under the mark in question to utilize the article ‘THE’ in front of ‘U-BANK’ in view of their uncertain memory or recollection of the many marks that they encounter in their everyday excursion into the marketplace”).

If an important or, as in the case here, dominant portion of both marks is the same, then the marks may be confusingly similar notwithstanding some differences. *See, e.g., Stone Lion*, 110 USPQ2d at 1161 (affirming TTAB's finding that applicant's mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION, and that the noun LION was the dominant part of both parties' marks); *Hewlett-Packard*, 62 USPQ2d at 1004 (even though applicant's mark PACKARD TECHNOLOGIES, with "TECHNOLOGIES" disclaimed, does not incorporate every feature of opposer's HEWLETT PACKARD marks, a similar overall commercial impression is created).

Applicant argues:

The presence of "BREWING" as a component of each of the cited marks, and the presence of "THE" as a component of the Applicant's mark, result in the following syntactic difference that causes the marks to give differing commercial impressions. CAIRN BREWING, would be perceived as referring to an entity, named "Cairn," engaged in the production of beer. On the other hand, the definite article "THE" in "THE CAIRN" suggests that the mark refers to an object known as a "cairn," which some persons would understand as a mound composed of rocks. Others, not knowing what a "cairn" is, would likely perceive "THE CAIRN" as referring to some kind of object or activity the nature of which is unknown. Thus, in the present case, the commercial impressions afforded by the marks THE CAIRN and CAIRN BREWING, differ significantly when each is considered in its entirety.<sup>15</sup>

As previously discussed, CAIRN denotes a mound or pile of rocks. There is no evidence of record that CAIRN BREWERY has a significantly different connotation as applied to beer as THE CAIRN applied to spirits and liquor. Applicant's THE CAIRN mark connotes a mound of rocks while the registered mark CAIRN

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<sup>15</sup> 4 TTABVUE 9.

BREWERY connotes a mound of rocks where beer is produced. As a result, the marks are highly similar in connotation or meaning.

While we have taken into account the differences in appearance and sound, based on the above analysis we find, on comparison of the marks in their entireties, that THE CAIRN is more similar to the mark CAIRN BREWERY than dissimilar in terms of appearance, sound, connotation and commercial impression. As a result, consumers encountering CAIRN BREWERY and THE CAIRN could mistakenly believe the latter is a shortened variation on the registered mark used to identify related goods emanating from a common source. *See In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1964 (TTAB 2016) (“In general, use of a house mark does not obviate confusion.”) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring) (“[T]he users of language have a universal habit of shortening full names—from haste or laziness or just economy of words”)).

For these reasons, we find that the marks are highly similar. Thus, the first *DuPont* factor also weighs in favor of finding a likelihood of confusion.

#### **E. Conclusion**

When we consider the record and the relevant likelihood of confusion factors, and all of Applicant’s arguments relating thereto, we conclude that consumers familiar with goods identified in the cited registration offered under its mark would be likely to believe, upon encountering Applicant’s mark, that the goods originated with or are associated with or sponsored by the same entity.



Serial No. 79296030

**Decision:** The refusal to register Applicant's mark THE CAIRN is affirmed under Section 2(d) of the Trademark Act.