

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Coventya

Serial No. 79319649

Fatima Lahnin of Carmody Torrance Sandak & Hennessey
for Coventya.

Barbara Wold, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

Before Goodman, Lebow and Stanley,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Coventya, seeks to register the standard-character mark FINIGARD
on the Principal Register for

Chemical products intended for surface treatment, namely, chemical products for use in corrosion protection of metals and chemical products for use in structural strength modification of metal parts, excluding metal parts related to HVAC equipment, for use on electroplated and passivated components; chemical products for coatings of metal, namely, chemical compositions used in plating metal parts and chemical compositions used in electroplating

in International Class 1, and

Products for the treatment of metal surfaces in order to make them resistant to rust as well as tarnishing, namely, rust preservatives in the nature of a coating for metal surfaces, excluding metal surfaces related to HVAC equipment, for use on electroplated and passivated components; protective products for metals, namely, protective preservatives used in electroplating metals to protect against rust, excluding metals related to HVAC equipment, for use on electroplated and passivated components; treatment agents for metal surfaces in the form of paints

in International Class 2.¹

The Trademark Examining Attorney has issued a final refusal to register Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it so resembles the standard-character mark INFINIGUARD, registered on the Principal Register for "Anti-corrosion coating for HVAC equipment and other metal surfaces" in International Class 2.²

Applicant filed a notice of appeal and a request for reconsideration. After the request was denied, the appeal resumed. Both Applicant and the Examining Attorney have filed briefs. For the reasons discussed below, we affirm the refusal to register.

I. Likelihood of Confusion

"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 ... of

¹ Application Serial No. 79319649 ("the Application") was filed on June 11, 2021 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141(f), to extend the protection of International Registration No. 1611641 to the United States.

² Registration Nos. 5376625, issued on January 9, 2018; maintained.

The Examining Attorney had also issued a final refusal based on likelihood of confusion with the mark INFINIGARD in Registration No. 5447417 owned by the same registrant for similar goods but, following a petition to cancel brought by applicant during which time its application was suspended, that registration was cancelled and the refusal based on it was withdrawn.

the applicant, to cause confusion, mistake, or to deceive.’ 15 U.S.C. § 1052(d) (also called Section 2(d)).” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). “To determine whether a likelihood of confusion exists under section 2(d), the Board considers the so-called *DuPont* factors in its analysis. *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (reciting thirteen factors to be considered, referred to as ‘*DuPont* factors’).” *Id.*

We consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), but “we focus our analysis on those factors we find to be relevant.” *ProMark Brands, Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2014). “The weight given to each factor depends on the circumstances of each case,” *Charger Ventures*, 64 F.4th at 1381, and “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the [goods].” *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *14 (TTAB 2023) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (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.”).

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

We begin with the second and third *DuPont* factors which respectively consider the “similarity or dissimilarity and nature of the goods or services as described in an

application or registration” and the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014).

Upon review, we find that certain goods identified in both classes of the Application overlap with, and are legally identical in-part to the goods identified in the cited registration. Specifically, the following goods identified in Class 1 of the Application,

Chemical products intended for surface treatment, namely, **chemical products for use in corrosion protection of metals ...**, excluding metal parts related to HVAC equipment, for use on electroplated and passivated components

and the following goods identified in Class 2 of the Application,

Products for the treatment of metal surfaces in order to make them resistant to rust³ as well as tarnishing, namely, rust preservatives in the nature of a coating for metal surfaces, excluding metal surfaces related to HVAC equipment, for use on electroplated and passivated components; [and]

Protective products for metals, namely, protective preservatives used in electroplating metals to protect against rust, excluding metals related to HVAC equipment, for use on electroplated and passivated components

overlap with the “**Anti-corrosion coating for HVAC equipment and other metal surfaces**” identified in the cited registration (emphasis added).

³ “Corrosion” is “[a] substance, such as rust, formed by corroding,” and “rust” is “[a]ny of various metallic coatings, especially oxides, formed by corrosion.” See THE AMERICAN HERITAGE DICTIONARY (<https://www.ahdictionary.com/word/search.html?q=corrosion> and <https://www.ahdictionary.com/word/search.html?q=rust> (both accessed August 4, 2025)). See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982) (“[T]he Board may take judicial notice of use of a term in dictionaries.”). See also *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988) (“dictionaries and encyclopedias may be consulted”). Rust is therefore a type of corrosion.

Notwithstanding the overlapping and legally identical in-part nature of the goods, Applicant argues that its identification “includes a precise limitation: ‘excluding metal parts related to HVAC equipment,’ clearly demarcating a boundary between Applicant’s market and the market served by Registrant.”⁴ According to Applicant, “[t]his explicit exclusion underscores Applicant’s intent and market reality: FINIGARD products target specialized industries such as automotive manufacturing, precision metal finishing, and electroplating—sectors distinctly separate from HVAC applications.”⁵ “Conversely,” asserts Applicant, “Registrant’s INFINIGUARD product is an ‘anti-corrosion coating for HVAC equipment and other metal surfaces,’ clearly identified to serve specifically the HVAC market and related general-use metal surfaces, without association or claim related to precision metal treatments, electroplating, or the highly specialized finishing processes Applicant engages in.”⁶

The first problem with Applicant’s argument is that it ignores the wording “**and other metal surfaces**” in the identification of the cited registration, which causes the overlap. Indeed, the anti-corrosion coating in the cited registration must be read to include **all** metal surfaces **including the metal surfaces treated and protected by Applicant’s products or chemicals**, not just HVAC equipment. The second problem with Applicant’s argument is that it requires us to import restrictions

⁴ 6 TTABVUE 10 (Applicant’s Brief).

⁵ *Id.*

⁶ *Id.*

into the identification of goods in the cited registration, rather than giving it full sweep, and to account for Applicant's purported "intent and market reality" in "target[ing] specialized industries such as automotive manufacturing, precision metal finishing," something we cannot do. *See e.g., In re i.am.symbolic*, 866 F.3d 1315, 1327 (Fed. Cir. 2017) ("[T]he Board properly declined to import restrictions into the identification of goods based on alleged real world conditions."); *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 902 (CCPA 1973) (Board must "give full sweep" to an identification of services regardless of the registrant's actual business); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009) ("We have no authority to read any restrictions or limitations into the registrant's description of goods."). It is the manner in which the Applicant and Registrant have identified their goods in their respective identifications that is controlling. *See In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764-765 (TTAB 1986) ("[T]he question of likelihood of confusion must be determined by an analysis of the marks as applied to the goods identified in the application vis-à-vis the goods recited in the registration, rather than what extrinsic evidence shows those goods to be.").

Turning to a comparison of the channels of trade under the third *DuPont* factor, because the goods in the application and cited registration are legally identical in part, and there are no limitations on trade channels or consumers, we must presume that the trade channels and classes of consumers for those legally identical in-part goods are also the same. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) ("[T]he TTAB properly followed our case law and 'presume[d] that the

identical goods move in the same channels of trade and are available to the same classes of customers for such goods”); *In re Viterra*, 671 F.3d 1358, 1362 (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); *Monster Energy*, 2023 USPQ2d 87, at *23 (citing *Viterra*, 671 F.3d at 1362 (finding Board entitled to rely on this legal presumption in determining likelihood of confusion)); *see also In re Yawata Iron & Steel Co.*, 403 F.2d 752, 754 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers for those goods are considered to be the same). Applicant’s argument to the contrary,⁷ like its argument against the relatedness of the goods, fails to account for the overlapping goods in the application and the cited registration.

The second and third *DuPont* factors weigh heavily in support of a finding of likelihood of confusion.

B. Purchasing Conditions

We turn now to the fourth *DuPont* factor, which considers “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361; *Stone Lion*, 746 F.3d at 1319. “Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1376 (Fed. Cir. 2005) (citation omitted).

⁷ *Id.* at 13, 15.

Applicant argues that its FINIGARD products “are sold exclusively to sophisticated buyers, typically skilled engineers, industrial technicians, and manufacturers engaging in precision processes involving metal finishing, electroplating, and structural metal treatments,” whereas the cited registration’s INFINGUARD products “are general-purpose, widely-marketed anti-corrosion treatments aimed principally at HVAC equipment manufacturers and maintenance providers—a separate industrial and commercial sector with little, if any, overlap.”⁸ But Applicant did not provide any evidence relating to the conditions of purchase, and attorney argument is not evidence. *See, e.g., Estee Lauder Inc. v. L’Oreal, S.A.*, 129 F.3d 588, 595 (Fed. Cir. 1997) (“arguments of counsel cannot take the place of evidence lacking in the record”) (citation omitted). In any event, as discussed *supra*, the goods in the application and cited registration directly overlap.

Moreover, even if we were to assume that purchasers of Applicant’s products for treating and protecting against the erosion and rust of metal parts for electroplated or passivated components, or for plating metal parts, are sophisticated in their industry, it does not mean they are sophisticated or knowledgeable in the field of trademarks or otherwise immune from source confusion, especially where, as here, the respective goods are overlapping and, as discussed *infra*, are offered under similar marks. *In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993), *Weiss Assocs., Inc. v. HRL Assocs., Inc.*, 902 F.2d 1546, 1548 (Fed. Cir. 1990) (affirming the Board’s reasoning that even sophisticated purchasers may be confused by similar marks).

⁸ *Id.* at 11.

The fourth *DuPont* factor is neutral.

C. The Similarity or Dissimilarity of the Marks

We turn now to the first *DuPont* factor, which considers “the similarity or dissimilarity of the [applicant’s and cited registrant’s] marks in their entireties as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361; *Stone Lion*, 746 F.3d at 1321. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d*, 777 Fed. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

We do not predicate our analysis on a dissection of the respective marks; we consider them in their entireties. *Stone Lion*, 746 F.3d at 1321; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). “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.” *Cai*, 901 F.3d at 1373 (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (internal quotation marks and citation omitted)). “Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014).

We keep in mind that “the more similar the goods at issue, the less similar the marks need to be for the Board to find a likelihood of confusion.” *In re Hitachi High-Techs. Corp.*, 109 USPQ2d 1769, 1773 (TTAB 2014), citing *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.”). *See also In re Mighty Tea Leaf*, 601 F.3d 1342, 1348 (Fed. Cir. 2010) (same).

Once again, Applicant’s proposed mark is FINIGARD, and the mark in the cited registration is INFINIGUARD.

Applicant argues that the marks FINIGARD and INFINIGUARD “differ significantly.”⁹ With respect to their appearance and sound, Applicant asserts that FINIGARD is “noticeably shorter and visibly simpler, consisting of only eight letters, whereas INFINIGUARD is lengthier at eleven characters.” Applicant also asserts that “[t]he initial syllable in Applicant’s mark, ‘FINI,’ pronounced [fee-nee] or [fin-nee], sets a clear auditory boundary from Registrant’s ‘INFINT’ [in-fin-ee], a three-syllable prefix.”¹⁰ And “perhaps most importantly,” argues Applicant, turning to connotation and commercially impression,

FINIGARD distinctly evokes the notion of finishing, completeness, and a final stage in surface treatments, precisely matching the nature of Applicant’s sophisticated goods in metal finishing and corrosion protection—industries wherein finishing and durability are critically understood by professionals. In stark contrast, Registrant’s mark INFINIGUARD conjures an entirely different image—one of infinite, ongoing, continuous protection. This distinction is not trivial; it is

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

precisely the type of significant commercial impression difference recognized by prior decisions of the TTAB and Federal Circuit as strongly indicative against a likelihood of confusion.¹¹

We are not persuaded by these arguments, finding instead, as the Examining Attorney posits, that “the similarities between the marks are greater than the minutia of their differences.”¹² While Applicant makes much of the added syllable and length resulting from the prefix “IN” in the cited mark, we find it insignificant overall, particularly given the overlapping goods. “Purchasers ... do not engage in trademark syllable counting—they are governed by general impressions made by appearance or sound, or both.” *In re John Scarne Games, Inc.*, 120 USPQ 315, 315-16 (TTAB 1959).

Applicant also provides no evidence to support its contention that consumers would perceive FINIGARD as connoting “finishing, completeness, and a final stage in surface treatments,” and INFINIGUARD as connoting “infinite, ongoing, continuous protection.” Even if we could say that the prefix “INFINI-” in the cited mark suggests something that is infinite and long-lasting, the prefix “FINI-” in Applicant’s mark could just as easily be perceived as connoting something that is finite or of limited duration, in which case the respective marks may be perceived as identifying sister products emanating from a common source: one with limited protection and duration; the other that is more durable and long-lasting, providing a higher level of protection. *See e.g., In re Dare Foods Inc.*, 2022 USPQ2d 291, at *13

¹¹ *Id.* at 4-5.

¹² 8 TTABVUE 8 (Examining Attorney’s Brief).

(TTAB 2022) (for RAINCOAST DIP and RAINCOAST TRADING marks, “consumers encountering these marks could mistakenly believe the former is a variation on the registered mark used to identify a particular line of snack food dips, but nonetheless emanating from a common source”).

Again, the issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether they are sufficiently similar in terms of their overall commercial impression such that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.*, 668 F.3d at 1368.

An individual relies on the recollection of the various marks that he or she has previously seen in the marketplace, *see, e.g., Franklin Mint Corp.*, 212 USPQ at 234 (“Those who comprise the purchasing public for these goods ordinarily must depend upon their past recollection of marks to which they were previously exposed.”) (citation omitted), and, more frequently than not, such recollection is not enhanced with minute details or specific characteristics of the marks, but is determined by an overall or general impression of the many and various marks that exist in the marketplace.

In re Info. Builders Inc., 2020 USPQ2d 10444, at *6-7 (TTAB 2020). *See also North Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1228 (TTAB 2014) (“[U]nder actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must rely upon their imperfect recollections.”).

Neither Applicant nor the Examining Attorney argue that the difference in the spelling of the suffix -GARD (once defined as “[a] simplified spelling of *guard*,”¹³ but

¹³ *See* <https://archive.org/details/centurydictionary11whit/page/510/mode/2up>, providing a complete copy of THE CENTURY DICTIONARY AND CYCLOPEDIA: A WORK OF UNIVERSAL

not appearing in modern dictionaries) versus -GUARD in the marks is significant. Applicant's assertion that its FINIGARD mark is "suggestive of specialized metal finishing treatments" seems to acknowledge that the difference in spelling itself is not significant. We do not find that this difference detracts from the overall similarities of the marks.

The first *DuPont* factor weighs in favor of a finding of likelihood of confusion.

D. Actual Confusion

Under the seventh and eighth *DuPont* factors, we consider the nature and extent of any actual confusion, in light of the length of time and conditions under which there has been contemporaneous use of the subject marks." *DuPont*, 476 F.2d at 1361; *Stone Lion*, 746 F.3d at 1319-20. Applicant invokes these factors, arguing that it "has demonstrated continuous commercial use of the FINIGARD mark for over 25 years without a single documented instance of confusion."¹⁴

Applicant's argument is unavailing. Applicant has provided no testimony or other evidence showing any use of its mark in connection with any particular goods or services for any period of time in the United States. While Applicant made of record printouts from its website discussing, for example, the number of years it has been in business,¹⁵ that evidence, while admissible for what it shows on its face, is not

REFERENCE IN ALL DEPARTMENTS OF KNOWLEDGE WITH A NEW ATLAS OF THE WORLD (William Dwight Whitney ed., The Century Co. 1896) (accessed August 7, 2025), as a scan of the originally published form from which we take judicial notice.

¹⁴ 6 TTABVUE 18 (Applicant's Brief).

¹⁵ November 10, 2023 Request for Reconsideration, TSDR at 24-25.

admissible for its truth and, in any event, does not prove use of the mark FINIGARD in commerce for the relevant goods. *See In re Embiid*, 2021 USPQ2d 577, at *6-7 n.19 (TTAB 2021) (Board is “more permissive regarding the use of hearsay in ex parte appeals” but “may still consider the hearsay nature of evidence in assessing its probative value in an ex parte proceeding”); *Spiritline Cruises LLC v. Tour Mgmt. Servs., Inc.*, 2020 USPQ2d 48324, at *2 (TTAB 2020) (Internet printouts and other materials without supporting testimony considered only for what they show on their face rather than for the truth of the matters asserted).

Even if the webpage printouts were not considered hearsay, they provide little probative value. As the Examining Attorney observes, “it is not clear in the record what applicant’s use has been in the United States.”¹⁶ Applicant is an international company domiciled in France and the broad statement in its website referring to its company’s goods being “sold in all 16 [Applicant] COUNTRIES” sheds no light on the particular goods provided, and to what extent they have been provided, in the United States.

Further, under the seventh *DuPont* factor, “while examples of actual confusion may point toward a finding of likelihood of confusion, an absence of such evidence is not compelling in support of a finding of no likelihood of confusion.” *In re Integrated Embedded*, 120 USPQ2d 1504, 1515. (TTAB 2016). This is especially true in an ex parte context. *In re Guild Mort. Co.*, 2020 USPQ2d 10279, *7 (TTAB 2020) (“[I]n this ex parte context, there has been no opportunity to hear from Registrant about

¹⁶ *Id.* at 25-36.

whether it is aware of any reported instances of confusion. We therefore are getting only half the story.”). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (“The lack of actual confusion carries little weight ... especially in an *ex parte* context.”).

Finally, “[w]hile evidence of actual confusion may be considered in the *DuPont* analysis, a showing of actual confusion is not necessary to establish a likelihood of confusion.” *i.am.symbolic*, 866 F.3d at 1322 (citation and internal punctuation omitted).

The seventh and eighth *DuPont* factors are neutral in our analysis.

E. Conclusion

We have found that the first, second, and third *DuPont* factors weigh in favor of a finding of likelihood of confusion, the second and third heavily so, and the fourth, seventh and eighth *DuPont* factors are neutral, with no relevant *DuPont* factors weighing against a finding of likelihood of confusion. Accordingly, we conclude that Applicant’s mark FINIGARD for the goods identified in Application Serial No. 79319649 is likely to cause confusion with the mark INFINIGUARD for the goods identified in Registration No. 5376625.

Decision: The refusal to register the mark FINIGARD in Application Serial No. 79319649 under Section 2(d) is affirmed.