

**This Opinion is Not a  
Precedent of the TTAB**

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**United States Patent and Trademark Office**  
Trademark Trial and Appeal Board

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*In re Royal Wine Corporation*

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Serial No. 85775626

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Paulette R. Carey of Buchman Law Firm, LLP, representing Royal Wine Corporation

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(Chris A. F. Pedersen, Managing Attorney).

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Before Grendel, Holtzman and Wolfson, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Royal Wine Corporation (“applicant”) seeks registration on the Principal Register of the mark STORM CANDLE (in standard characters) for “candles,” in International Class 4.<sup>1</sup>

The Trademark Examining Attorney has refused registration of applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), contending that applicant’s use of its mark on “candles” is likely to cause confusion with Reg. No.

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<sup>1</sup> Filed November 9, 2012 on the basis of applicant’s bona fide intent to use the mark in commerce. Applicant has disclaimed the word CANDLE in the mark.

2228450, for the mark STORM WATCH (in standard character format), for “candles and fragrant wax for use in potpourri burners” in International Class 4.<sup>2</sup>

After the examining attorney made the refusal final, applicant appealed to this Board. We affirm the refusal to register.

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); see also *Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re SL&E Training Stable, Inc.*, 88 USPQ2d 1216, 1217 (TTAB 2008) (“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods.”).

Applicant argues that the nature of the goods on which the marks are used in this case “is of no relevance,” *Brief* at 9, citing *Kellogg Co. v. Pack'em Enters.*, 951 F.2d 330, 21 USPQ2d 1142, 1144-45 (Fed.Cir.1991); and *Champagne Louis Roederer*

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<sup>2</sup> Registered March 2, 1999; renewed.

*v. Delicato Vineyards*, 148 F. 3d 1373, 47 USPQ2d 1459 (Fed Cir. 1998) (CRISTAL and CRYSTAL CREEK not confusingly similar). Applicant contends that because the marks STORM CANDLE and STORM WATCH are so dissimilar, the remaining *du Pont* factors are irrelevant.

The cases cited by applicant do not teach that we should simply ignore the nature of the goods. In *Kellogg's*, the court found sufficient dissimilarities between



the marks FROOT LOOPS and to have outweighed the other factors, but observed that the Board “considered [the other factors], but concluded that even if Kellogg at trial could establish all of those claims, that evidence would be insufficient to show likelihood of confusion.” *Kellogg's*, 21 USPQ2d at 1144. Moreover, the court in *Kellogg's* made it clear that only “substantial and undisputed differences in ‘appearance, sound, connotation and commercial impression’ between the marks...warranted the grant of summary judgment.” *Id.* In *Champagne Louis Roederer*, the court likewise noted that the Board “did, to the extent it was presented with evidence, assess the thirteen factors enumerated by one of our predecessor courts as constituting the test for likelihood of confusion.” *Champagne*, 47 USPQ2d at 1460. Accordingly, we decline to adopt applicant’s proposal to consider whether the goods are related to be “of no relevance.”

In fact, there is no dispute that the goods are identical in part; both applicant’s and registrant’s identifications include “candles.” Therefore, the second

*du Pont* factor weighs heavily in favor of a likelihood of confusion. *See Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (Likelihood of confusion must be found with respect to a class of goods or services in an application if there is likely to be confusion with respect to any item that comes within the identification of the goods or services in that class).

Turning to the first *du Pont* factor, regarding the cumulative effect of the differences and similarities of the marks involved, we consider the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *du Pont*); *Palm Bay*, 73 USPQ2d at 1692; and TMEP §1207.01 (April 2013). The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant's mark is STORM CANDLE. Because the word "candle" is generic for the goods, while it has some effect on the visual and aural perceptions of the mark, it contributes less to its overall commercial impression and virtually nothing to its source-indicating function. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985) ("That a particular feature is descriptive or generic

with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark”). The applicant does not dispute that STORM is the dominant feature in its mark, but argues that the examining attorney improperly dissected the cited mark by concluding that the word STORM is the dominant portion of the mark STORM WATCH. The examining attorney contends that the word STORM is the dominant portion of the cited mark because it is the first word of the mark and “also provides a distinct, unique impression of the purpose of the goods, namely, that the goods relate in some form or fashion to a ‘storm.’” *Examining Attorney’s Brief* at 4. While the analysis cannot be predicated on dissecting the marks into their various components, different features may be analyzed to determine whether the marks are similar, and there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 224 USPQ at 751; *Price Candy Company v. Gold Medal Candy Corporation*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955). There is nothing improper in according the term STORM greater significance in considering the overall impression created by the mark.

On the other hand, we agree that the wording “storm watch” may be perceived by prospective buyers as a unitary phrase. Applicant, in reliance on National Weather Service definitions, argues that “STORM WATCH is a meteorological term referring to a long range weather prediction issued at least 12

hours before hazardous weather is expected to begin.” *Applicant’s Response to first (and second) Office actions*. While we accept this connotation of the wording, we do not agree that therefore, the marks “are not similar in their meanings” or that they “create clearly distinct commercial impressions.” *Brief*, at 4. Instead, we find the marks similar in appearance and pronunciation due to the presence of the word “STORM” in both marks, and similar in their connotations and overall commercial impressions because, as applied to the involved goods, both marks bring to mind the idea of candles that illuminate the dark during a stormy weather condition, such as a storm watch, storm warning, or actual storm. In overall commercial impression, the marks evoke the same mental image. Should consumers who are familiar with registrant’s STORM WATCH candles encounter applicant’s STORM CANDLE candles, they are likely to mistakenly believe the goods emanate from the same source. The first *du Pont* factor weighs in favor of a likelihood of confusion.

Because the goods are in-part identical, and there are no restrictions in either the application or the cited registration, we must presume that the channels of trade and classes of purchasers are the same. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers.”). These *du Pont* factors further weigh in favor of a finding of likelihood of confusion.

To summarize, the marks are similar and the goods identical in part. There are no restrictions as to trade channels or classes of purchasers; accordingly they are presumed to be the same. Applicant's registration of the mark STORM CANDLE for "candles" is likely to cause confusion with the cited mark STORM WATCH for "candles and fragrant wax for use in potpourri burners."

***Decision:*** The refusal to register applicant's mark STORM CANDLE is affirmed.