

This Opinion is Not a
Precedent of the TTAB

Mailed: April 9, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Marshall Brewing Company, LLC
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Serial No. 87019347
—

Shawn M. Dellegar of Crowe & Dunlevy PC,
for Marshall Brewing Company, LLC.

Leslie Ann Thomas-Riggs, Trademark Examining Attorney, Law Office 125,
Mark Pilaro, Managing Attorney.

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Before Bergsman, Greenbaum and Heasley,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Marshall Brewing Company, LLC (“Applicant”) seeks registration on the Principal Register of the mark VOLKS PILS (in standard characters) for “beer; lager,” in Class 32.¹ Applicant disclaimed the exclusive right to use the term “Pils.” Also, Applicant included a statement in its application that “[t]he English translation of ‘Volks’ in the mark is ‘Peoples.’”

¹ Application Serial No. 87019347 was filed on April 29, 2016, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as March 3, 2015.

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 that Applicant's mark so resembles the registered mark VOLK (typed drawing) for "vodka," in Class 33, as to be likely to cause confusion.² The registration includes the following translation statement: "The word 'Volk' can be translated into English as 'Wolf'."

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*du Pont*") cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *du Pont* factor that is relevant or for which there is evidence of record. See *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *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."). In any likelihood of confusion analysis, two key considerations are the similarities between the marks

² Registration No. 2952079, registered May 17, 2005; renewed.

and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.2d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

I. The similarity or dissimilarity of the marks.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *du Pont*, 177 USPQ at 567. “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).

“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); *see also San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests.*

Inc. v. Morrison Inc., 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, 972 F.2d 1353 (Fed. Cir. 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). As discussed below, because the goods at issue are beer, lager and vodka, the average customer is an ordinary consumer.

The marks are similar because they share the term VOLK or VOLKS. It is well established that trademarks consisting of the singular and plural forms of the same word are essentially the same mark. *See Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957) (finding no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark); *see also In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016) (“pluralization commonly does not alter the meaning of a mark”); *Weider Publ'ns, LLC v. D&D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014); *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 the likelihood of confusion of purchasers....”). Suffice it to say, we disagree with Applicant’s argument that its inclusion of the letter “S” in its mark VOLKS PILS distinguishes it from Registrant’s mark VOLK.³

³ Applicant’s Brief, p. 3 (7 TTABVUE 8).

While Applicant translates “Volks” as “peoples” and Registrant translates “Volk” as “Wolf,” the evidence shows that the singular “Volk” may also be translated as “people.” For example:

- Google (translate.google.com) translates “volk” as “people”;⁴
- Ancestry.com explains that “Volk” is “a short form of various German personal names with the first element folk ‘people.’” Ancestry.com noted that “Volk” is nickname meaning “wolf”;⁵
- Definitions.net translates “volk” as “people” in German and “wolf” in Slovenian;⁶ and
- The Babylon 10 website (translation.babylon-software.com) translates “volk” as “people.”⁷

Therefore, there is nothing in the record to indicate that the addition of the letter “S” at the end of the word “VOLKS” in Applicant’s mark VOLKS PILS alters the meaning of the word “Volk” beyond making the word plural.

Applicant contends that American consumers familiar with German understand the term “volk” to mean “people” while consumers familiar with Slovenian or Russian understand the term “volk” or “volks” to mean “wolf.”⁸ While this may be true,

⁴ August 12, 2017 Office Action (5 TTABVUE 6).

⁵ Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 53); *see also* the MyHeritage website (lp.myheritage.com) attached to Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 58).

⁶ Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 54).

⁷ Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 57).

⁸ Applicant’s Brief, p. 7 (7 TTABVUE 12).

consumers who understand one language but not the others will construe the meaning of “volk” or “volks” consistent with the language they understand and American consumers without any knowledge of foreign languages construe “volk” as an arbitrary or fanciful term.

With respect to Applicant’s mark, the word “Volks” is the dominant part of the mark because the term “Pils” is an abbreviation for “Pilsner,” which describes the type of beer.⁹ It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”). There is nothing improper in stating that, for rational reasons, more or less weight has been given to

⁹ “Pils” is defined as “short for Pilsner.” Oxford Dictionaries (oxforddictionaries.com) attached to the July 11, 2016 Office Action (TSDR 44); *see also* The Free Dictionary (thefreedictionary.com) and Dictionary.com both based on the Collins English Dictionary (12th ed. 2014) attached to Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 39-40) (“a type of lager-like beer.”).

“Pilsner” is defined as “a lager beer with a strong hop flavor, originally brewed at Pilsen in Bohemia (now the Czech Republic) and traditionally served in a tall glass tapered at the bottom.” Oxford Dictionaries (oxforddictionaries.com) attached to the July 11, 2016 Office Action (TSDR 45)

Citations to the TSDR database are in the .pdf format.

a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Nat'l Data Corp.*, 224 USPQ at 751.

Further reinforcing the significance of the word “Volks” as the dominant element of VOLKS PILS is its location as the first part of the mark. *See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word); *Presto Prod. Inc. v. Nice-Pak Prod., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

Applicant argues that its inclusion of the term “Pils” is sufficient to distinguish the marks and points to four sets of third-party registrations purportedly for beer and vodka for the same or similar marks owned by different entities.¹⁰ However, the third-party registrations are for beer and wine, not beer and vodka. Thus, these registrations have limited probative value because they are for products different than in this appeal. *See Key Chem., Inc. v. Kelite Chem. Corp.*, 464 F.2d 1040, 175 USPQ 99, 101 (CCPA 1972); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB

¹⁰ Applicant’s Brief, p. 4 (7 TTABVUE 9) and Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 44-51).

2009). Moreover, those third-party registrations are based on records that are not before us and we must assess each mark on the record submitted with the application. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

In this case, the addition of the letter “S” and the descriptive term “Pils” to Applicant’s mark fail to distinguish Applicant’s mark VOLKS PILS from the registered mark VOLK. *See In re Denisi*, 225 USPQ 624, 624 (TTAB 1985) (“if the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences.”).

We find that Applicant’s mark VOLKS PILS is similar to the registered mark VOLK in appearance, sound, meaning and commercial impression.

II. The similarity or dissimilarity and nature of the goods.

The next *du Pont* factor we consider is whether Applicant’s beer and lager are related to Registrant’s vodka. While beer/lager and vodka are different products and not interchangeable, such products nonetheless may be related even if they are not identical, competitive or complementary. “[G]oods that are neither used together nor related to one another in kind may still ‘be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.’” *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) (quoting *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000)); *see also McDonald’s Corp. v. McKinley*, 13 USPQ2d 1895, 1898 (TTAB 1989) (“In order to find that there is a likelihood of confusion, it is not necessary that the goods or services on or in connection with which

the marks are used be identical or even competitive. It is enough if there is a relationship between them such that persons encountering them under their respective marks are likely to assume that they originate at the same source or that there is some association between their sources”). In short, the test is not whether consumers would be likely to confuse the goods, but rather whether they would be likely to be confused as to their source. *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012).¹¹

Here, the Trademark Examining Attorney has submitted 12 use-based trademark registrations for both beer and vodka to show that those goods are commonly registered by a single entity under a common mark.¹² “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); *see also In re Infinity Broadcasting Corp. of Dallas*, 60 USPQ2d 1214, 1217-18 (TTAB 2001). These registrations support the Examining Attorney's argument that Registrant's vodka and Applicant's beer and lager are likely to originate from a common source. *In re*

¹¹ Accordingly, Applicant's explanation regarding the differences between beer and vodka has limited value in analyzing whether consumers perceive that these products may emanate from the same source. Applicant's Brief, pp. 10-11 (7 TTABVUE 15-16).

¹² July 11, 2016 Office Action (TSDR 14-43) and January 27, 2017 Office Action (TSDR 15-23).

Association of the United States Army, 85 USPQ2d 1264, 1270 (TTAB 2007) (“We find, first, that applicant’s ‘association services’ are related to the Class 35 and Class 42 services recited in the ‘479 and ‘969 registrations. The Trademark Examining Attorney has made of record six use-based third-party registrations...”).

The Examining Attorney also included Internet evidence that beer, lager and vodka originate from a common source.

- Rogue (rogue.com)¹³



- Dogfish Head (dogfish.com)¹⁴



¹³ July 11, 2016 Office Action (TSDR 8-9).

¹⁴ July 11, 2016 Office Action (TSDR 10-11).

- Ballast Pont (ballastpoint.com)¹⁵



- Round Barn Brewery (drinkmichigan.com)¹⁶



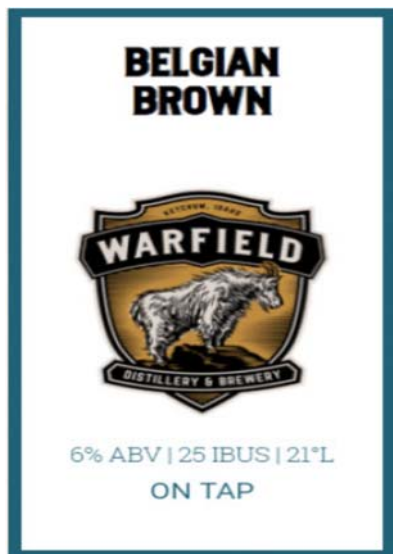
¹⁵ July 11, 2016 Office Action (TSDR 12-13).

¹⁶ January 27, 2017 Office Action (TSDR 9-10).

- Rob Rubens Distilling & Brewing (rubensspirit.com)¹⁷



- Warfield Distillery & Brewery (warfielddistillery.com)¹⁸



¹⁷ January 27, 2017 Office Action (TSDR 11-12).

¹⁸ January 27, 2017 Office Action (TSDR 12-14).

- New Holland Brewing (newhollandbrew.com)¹⁹
- Little Toad Creek Brewery & Distillery (littletoadcreek.com)²⁰
- Square One Brewery & Distillery (squareonebrewery.com)²¹
- Crown Valley Brewing & Distilling (crownvalleybrewery.com)²²
- Grand River Brewery (grandriverbrewery.com)²³
- OHSO Brewery & Distillery (ohsobrewery.com)²⁴

Finally, the Examining Attorney submitted news articles regarding brewers expanding into distilling spirits, including vodka.

- *All About Beer Magazine* (allaboutbeer.com)²⁵

“Brewers Who Distill, Vintners Who Brew” (July 1, 2007)

But now it appears we have entered the crossover era of craft producers crossing lines. Brewers are distilling. Vintners are brewing. Consumers are drinking.

¹⁹ January 27, 2017 Office Action (TSDR 7-8). Photographs displaying the mark NEW HOLLAND BREWING on ale and stout and vodka cannot be legibly reproduced.

²⁰ January 27, 2017 Office Action (TSDR 6). The webpage advertises the company’s craft beers and craft spirits, including vodka, but does not include photographs of the mark on product.

²¹ August 12, 2017 Office Action (5 TTABVUE 7). The webpage advertises the company’s craft beers and craft spirits, including vodka, but does not include photographs of the mark on product.

²² August 12, 2017 Office Action (5 TTABVUE 8-9). Photographs displaying the mark CROWN VALLEY on beer and vodka cannot be legibly reproduced.

²³ August 12, 2017 Office Action (5 TTABVUE 10-11). The webpage advertises the company’s craft beers and craft spirits, including vodka, but does not include photographs of the mark on beer.

²⁴ August 12, 2017 Office Action (5 TTABVUE 12-13). The webpage advertises the company’s craft beers and craft spirits, including vodka, but does not include photographs of the mark on beer.

²⁵ August 12, 2017 Office Action (5 TTABVUE 14-16).

The news story refers to Anchor Brewing Company, Dogfish Head Brewing, Rogue Ales, and New Holland Brewing.

- *Quartz Magazine* (qz.com)²⁶

“Breweries are cranking our distilled spirits like it’s going out of style – and it isn’t” (February 22, 2016).

Never ones to stop innovating, more and more brewers are capitalizing on brand interest, making use of surplus raw materials, and scratching a persistent itch by distilling craft spirits – and it’s no passing fad.

The news story refers to Anchor Brewing Company, Dogfish Head Brewing, Ballast Point Brewing Company, Rogue Ales, and New Holland Brewing.

- *Market Watch* (marketwatchmag.com)²⁷

“Brewers Make The Move To Distilling” (January 15, 2015).

Leveraging their expertise and reputations, craft brewers are moving into the stillhouse.

... Noting the rise in demand for artisanal products of all kinds and drawing on experience, brewers are turning to distilling to extend their footprint. Although there are just a handful of dual producers right now, those numbers are growing.

Diversifying into spirits is a natural progression from brewing – a step that some brewers take after making beer for a decade or more.

²⁶ August 12, 2017 Office Action (5 TTABVUE 16-21).

²⁷ August 12, 2017 Office Action (5 TTABVUE 22-25).

This article reports that brewers who have moved into distilling have not had an issue raising capital because they rely on the income stream from their brewing business and that the skills honed from brewing beer transfer to the distilling process.²⁸

- *Fortune* (fortune.com)²⁹

“Now, top craft brewers are selling their own liquor”
(August 15, 2015)

... While beer remains the star of the show for craft brewers, several operations, including many well-known names, are also dabbling in the up and coming field of craft distilling.

... Brewers note that there’s a dotted line between brewing beer and distilling spirits.

... And, of course, it never hurts to have a well-known, well-respected name on the label.

“Having a great name in the brewing industry definitely helps push the name of the spirits to the forefront – and we’ve had a lot of comments when were [sic] about to release a product from people who say, “if this spirits is anything like the beer that Ballast Point makes, I’m going to purchase it,” says [Yuseff] Cherney [Chief Operating Office and head brewer/distiller at Ballast Point].

We now turn to Applicant’s evidence that, according to Applicant, shows that the beer and lager are not related to vodka. First, Applicant submitted the search results from the USPTO database showing that “beer” appears in the identification of goods for 14,099 live, use-based registrations in Class 32, that “vodka” appears in the identification of goods for 1,980 live, use-based registrations in Class 33, and that

²⁸ *Id.* at 5 TTABVUE 24.

²⁹ August 12, 2017 Office Action (5 TTABVUE 26-28).

only 35 registrations have both vodka and beer.³⁰ This search history has little probative value because it does not indicate whether the same entity has separate registrations for vodka and beer.

Second, Applicant claims that it has submitted 109 pairs of third-party registrations for the same or similar marks owned by different entities for vodka and beer.³¹ Applicants may submit sets of third-party registrations to show that the USPTO has registered the same or similar marks to different entities for the goods at issue. *In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366, 1369-70 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d at 1636 (“On the other hand, applicant has submitted copies of 13 sets of registrations for the same or similar marks for different types of trailers owned by different entities arguing, in essence, that the third-party registrations serve to suggest that the listed goods are of a type which may emanate from different sources”); *Helene Curtis Industries v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989) (“In connection with its related goods arguments, plaintiff has made of record numerous third-party registrations and exhibits to show that it is common in the trade for the same mark to appear both on personal care products and wearing apparel emanating from the same source. Defendant, on the other hand, has introduced registrations and exhibits to show registration and use of the same or similar marks on these same types of products, but emanating from different sources”).

³⁰ Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 77).

³¹ Applicant’s July 27, 2017 Request for Reconsideration (4 TTABVUE 9 and 79-282).

We find that half the registrations are for the same or similar marks and half of the marks are not similar. For example, the registrations listed below are illustrative of the registrations that support Applicant's contention:

- Registration No. 5017960 for the mark PALEO for ales and Registration No. 4392148 for the mark PALEO for vodka;³²
- Registration No. 4042838 for the mark VIKING for beer and Registration No. 4355548 for the mark VIKING and design for vodka;³³ and
- Registration No. 3948075 for the mark SLIVER for vodka, gin, whiskey and wine and Registration No. 3928863 for the mark SLIVER for beer, ale, and lager.³⁴

The registrations listed below are illustrative of the registrations that do not support Applicant's contention:

- Registration No. 4084001 for the mark YOU'RE GOLDEN for beer and Registration No. 4268549 for the mark YOU'RE IT for vodka, gin, rum, tequila, and whiskey;³⁵
- Registration No. 4832688 for the mark DRINKER'S PEACE for beer and Registration No. 3399627 for the mark "THE WINE DRINKER'S VODKA" for vodka;³⁶ and

³² Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 79-80).

³³ Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 81-82).

³⁴ Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 83-84).

³⁵ Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 103-104).

³⁶ Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 107-108).

- Registration No. 3929415 for the mark BATCH 19 for beer and Registration No. 4361386 for the mark EH19 for alcoholic beverages including vodka.³⁷

Applicant's third-party registrations do not rebut the Examining Attorney's evidence because "[t]here is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product. Therefore, evidence showing only that the source of one product may not be the source of another product does not aid applicant in its attempt to rebut the evidence of the examining attorney." *In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d at 1370. "Indeed, goods can be related even if there is *no evidence that any entity*, much less the applicant or registrant, is the source of both applicant's and registrant's goods." *Id.* at 1371 (citing *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003) ("Although the PTO apparently found no evidence of any manufacturer who both brews malt liquor and distills tequila, Majestic has not shown that the PTO's lack of evidence in that regard is relevant. Unless consumers are aware of the fact, if it is one, that no brewer also manufactures distilled spirits, that fact is not dispositive")). The evidence here clearly demonstrates that there are entities that are the source of vodka and beer.

The evidence of record convinces us that the goods, while different and not interchangeable, are nonetheless related.

³⁷ Applicant's July 27, 2017 Request for Reconsideration (4 TTABVUE 117-118).

III. Conditions under which and buyers to whom sales are made.

It is well established that absent restrictions in the application and registration, the identified products are presumed to be offered in all of the channels of trade and purchased by all the potential consumers that would be normal for those goods. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *In re Integrated Embedded*, 120 USPQ2d 1504, 1515 (TTAB 2016). Because the goods are beer, lager, and vodka, the potential consumers are all ordinary consumers who purchase and drink alcoholic beverages.

Moreover, because the respective identifications include “beer,” “lager,” or “vodka” without any limitation or restriction regarding a particular price point, we must treat the goods as including inexpensive as well as more costly beers, lagers, or vodka and, therefore, presume that purchasers for those products include ordinary consumers who may buy inexpensive beer, lager or vodka on impulse. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014) (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”); *see also In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (finding that not all purchasers of wine may be discriminating because while some may have preferred brands, “there are just as likely to be purchasers who delight in trying new taste treats”).

IV. Analyzing the factors.

Because the marks are similar, the goods are related and offered to the same classes of consumers, who may not exercise significant care or sophistication in their purchases, we find that Applicant's mark VOLKS PILS for beer and lager is likely to cause confusion with the registered mark VOLK for vodka.

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