

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 7, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Blyth Cowbell Brewing Inc.
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Serial No. 87411623
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Laura M. Konkel of Michael Best & Friedrich LLP,
for Blyth Cowbell Brewing Inc.

Chioma Oputa, Trademark Examining Attorney, Law Office 103,¹
Stacy Wahlberg, Managing Attorney.

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Before Kuhlke, Allard, and Stanley,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:²

¹ Three Trademark Examining Attorneys examined the involved application prior to its assignment to Examining Attorney Oputa, who issued the final refusal and who filed the brief of the United States Patent and Trademark Office (USPTO). In this opinion, we refer to Examining Attorney Oputa and her predecessors as the “Examining Attorney.”

² This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the LEXIS legal database and cites only precedential decisions, unless otherwise noted. See TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03(a)(2) (June 2024). For reference, precedential decisions of the Board, and precedential decisions of the Federal Circuit involving Board decisions that issued on January 1, 2008, or thereafter, may be viewed in TTABVue by entering the proceeding number, application number, registration number, expungement/reexamination number, mark, party, or correspondent. Many precedential Board decisions that issued from 1996 to 2008 are available online from the

Blyth Cowbell Brewing Inc. (“Applicant”) seeks registration on the Principal Register of the mark



(“BLYTH” and “BREWING CO.” disclaimed) for “Beer, ale, lager, stout, porter, craft beers, pale beer, flavored beers,” in International Class 32.³

Registration is refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used on the goods identified above, so resembles the mark COWBELL CREAM ALE (in standard characters, “CREAM ALE” disclaimed) registered on the Principal Register, for “Ales,” in

TTAB Reading Room by entering the same information. Most TTAB decisions that issued prior to 1996 are not available in USPTO databases.

³ Application Serial No. 87411623 was filed on April 14, 2017, under Trademark Act Section 44(d), 15 U.S.C. § 1126(d), based upon Applicant’s Canadian Application No. 1830823 filed on April 3, 2017. Applicant perfected its basis for registration under Trademark Act Section 44(e), 15 U.S.C. § 1126(e), by filing with the USPTO its Canadian Registration No. TMA1202154, which registered on October 5, 2023.

The mark is described as “consist[ing] of the stylized wording ‘BLYTH COWBELL BREWING CO.’, with the term ‘BLYTH’ arranged at the top thereof with circle design elements before and after ‘BLYTH’, the term ‘COWBELL’ in the bottom half thereof, and the terms ‘BREWING CO.’ at the bottom thereof; a design element including a bell cup shape with a handle shape above the cup and a shape of a hop plant seed cone below the bell cup, the design element vertically between the terms ‘BLYTH’ and ‘COWBELL’; five accent lines on each side of the design element; and an accent circle and two horizontally-extending accent lines located vertically between the term ‘COWBELL’ and the terms ‘BREWING CO.’.”

International Class 32,⁴ that it is likely to cause confusion, to cause mistake, or to deceive.

After the refusal was made final, Applicant appealed and requested reconsideration. After the request was denied, the appeal resumed. Applicant and the Examining Attorney filed briefs.⁵ We affirm the refusal.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits the registration of a mark that “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive ...”¹⁵ U.S.C. § 1052(d). Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City*

⁴ Registration No. 4700334 was issued on March 10, 2015; renewed.

⁵ Applicant’s brief appears at 6 TTABVUE and the Examining Attorney’s brief appears at 8 TTABVUE.

References to the briefs on appeal refer to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number; the number(s) following TTABVUE refer to the page number(s) of that particular docket entry. *See Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 251, at *2 n.1 (TTAB 2022).

Bank Grp., Inc., 637 F.3d 1344, 1356 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). These two factors, together with the third and sixth *DuPont* factors, are addressed in this decision.

A. Similarity or Dissimilarity and Nature of the Goods, Similarity or Dissimilarity of Established and Likely-to-Continue Channels of Trade and Classes of Purchasers

We first consider the second and third *DuPont* factors, “[t]he 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.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361). Our analysis under these factors is based on the identifications of goods in the application and the cited registration. *Id.*; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014). It is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

Applicant identifies, among other things, “ale,” which is identical to “ales” identified in the cited registration. Accordingly, we find that the goods are identical in part.

Because there are no limitations on trade channels or consumers in either the cited registration or the involved application, we must presume that the identical goods travel in the same channels of trade to the same classes of consumers. *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 ...”); *Stone Lion*, 746 F.3d at 1322-23 (Board correctly presumed that the trade channels and consumers were the same with respect to the parties’ legally identical services); *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers).

B. Strength or Weakness of the Mark of the Cited Registration

Because the strength or weakness of the cited mark informs our comparison of the marks, we address Applicant’s arguments that the cited mark is weak and entitled to a narrow scope of enforcement.⁶

In determining the strength of the cited mark, we consider both its inherent strength, based on the nature of the mark itself, and its commercial strength, based on marketplace recognition of the mark. *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362

⁶ 6 TTABVUE 2-7.

(Fed. Cir. 2023) (“There are two prongs of analysis for a mark’s strength under the sixth factor: conceptual strength and commercial strength.”); *see also In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”).

1. Conceptual Strength

The cited mark is registered on the Principal Register without a claim of acquired distinctiveness and is, thus, inherently distinctive. *Tea Bd. of India v. Republic of Tea, Inc.*, Opp. No. 91118587, 2006 TTAB LEXIS 330, at *62 (TTAB 2006) (a “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods”). The Examining Attorney argues that the term COWBELL, when considered in light of Registrant’s identified goods, “is arbitrary because it does not describe or suggest any ingredient, quality, characteristic, function, feature, purpose, or use of the goods” and is “inherently strong.”⁷ Applicant, for its part, does not address the issue of conceptual weakness, nor is there any evidence, such as third-party registration evidence, to support an argument that the cited mark is conceptually weak. As a result, on this record we find that there is no evidence to diminish the conceptual strength of the cited mark.

⁷ 8 TTABVUE 7-8.

2. Third-Party Uses

Applicant argues that the cited mark coexists with “widespread U.S. marketplace use of COWBELL by others for beers, **including third-party uses of COWBELL to identify cream ales—the exact same product on which the registrant’s mark is used[,]**” and that, as a result, the cited mark is weak and entitled to a narrow scope of protection.⁸ To this end, Applicant introduced evidence of use of 11 third-party marks that incorporate the term COWBELL in connection with “ales” and “beers.”⁹ Applicant sets out in its brief a chart showing an image of the third-party mark as it appears in use, the brewery name, and the brewery’s location(s).¹⁰



As discussed above, the involved goods are identical. Where the involved goods are identical, only third-party uses on those identical goods are probative of a term’s weakness. *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1326 (Fed. Cir. 2018) (finding that third-party uses of OMAHA-formative marks on popcorn, alcoholic beverages, and other foods products were not probative of the weakness of the opposer’s mark where both parties used their marks on meat products). As the Federal Circuit explained in *Omaha Steaks*, when third-party uses on unrelated goods “are properly understood as having no real probative value for the analysis at hand, the evidentiary universe is much smaller.” *Id.* See also *Nat’l Cable Television Ass’n v. Am. Cinema Eds.*, 937 F.2d 1572, 1579 (Fed. Cir. 1991).

⁸ 6 TTABVUE 2, 5 (emphasis in underline and bold in original, bold here).

⁹ May 30, 2024 Request for Reconsideration after Final Office Action at 8-49.

¹⁰ 6 TTABVUE 3-5.

Applicant argues that the uses of the third-party marks with “cream ales” are “the exact same product on which the registrant’s mark is used.”¹¹ We agree and find the following two third-party uses to be most relevant and repeat below Applicant’s chart in relevant part:

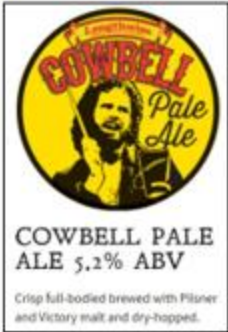

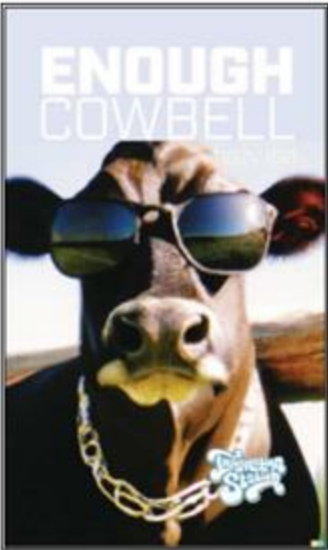
Mark	Use	Brewery	Location
COW BELL	 <p>COW BELL CREAM ALE</p>	Bloomer Brewing Co.	Wisconsin
COWBELL		Fretboard Brewing Company	Ohio


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Although not identical, given that ale is a type of beer, we also consider probative the evidence of the remaining 9 third-party marks for use with “beer,” as shown in Applicant’s chart and copied below:

¹¹ 6 TTABVUE 2.

¹² 6 TTABVUE 3; May 30, 2024 Request for Reconsideration after Final Office Action at 8-16.

Mark	Use	Brewery	Location
COWBELL	 <p>COWBELL PALE ALE 5.2% ABV Crisp full-bodied brewed with Pilsner and Victory malt and dry-hopped.</p>	Lengthwise Brewing Company	California
COWBELL		Voodoo Brewing Company	Pennsylvania, Colorado, Florida, Idaho, North Carolina, Ohio, South Carolina, Texas, Virginia, Nevada
COCO COWBELL	<p>COCO COWBELL BROWN ALE - OTHER</p> <p>6.7% ABV 12 Florida Brown Ale</p>	Armored Cow Brewing	North Carolina
ENOUGH COWBELL		Bale Breaker Brewing Company	Washington
ERIC MORE COWBELL!	<p>ERIC MORE COWBELL! CHOCOLATE MILK STOUT</p> <p>WE'VE GOT A FEVER - And there is only one cure: a lusciously creamy, slightly sweet Stout that also ships a roasty malt base and huge cocoa infusion that will rock all night long. NITRO Draft Available.</p> <p>ABV: 6.0% IBU: 28</p>	SingleCut	New York
MORE COWBELL	<p>2. More Cowbell Blonde</p> <p>7% ABV</p> <p>Medium bodied blonde ale has mild bitterness with subtle aroma and taste of caramel malt and honey.</p>	Dying Breed Brewing	California

Mark	Use	Brewery	Location
MORE COWBELL		Buffalo Bayou Brewing	Texas
PINK COWBELL	<p>Off Square Pink Cowbell</p> <p>16 oz Available Hide more options</p> <p>16 oz Available \$4.19 4pk Can Out of Stock \$15.99</p>	Off Square Brewing	Indiana
S'MORE COWBELL	<p>Here is a run down of what comes with Backyard Beer Club 2024:</p> <p>WHAT'S INCLUDED:</p> <ul style="list-style-type: none"> Hand Bottled and Wax Sealed Bourbon Barrel Aged S'more Cowbell Russian Imperial Stout 	Crooked Hammock	Delaware and South Carolina

The Examining Attorney does not attempt to discredit Applicant’s third-party use evidence, but rather accepts it on its face and argues that the evidence is insufficient to establish that the COWBELL element of the cited mark is commercially weak and entitled to a narrow scope of protection.¹³

We find that Applicant’s evidence consisting of 11 third-party uses “reflects a more modest amount of evidence than that found convincing in *Jack Wolfskin*[*Ausrüstung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363 (Fed. Cir. 2015)] and *Juice Generation, [Inc. v. GS Enters. LLC*, 794 F.3d 1334 (Fed. Cir. 2015)] wherein ‘a considerable number of third parties’ use [of] similar marks was

¹³ 8 TTABVUE 8.

shown.”¹⁴ As a result, we find that Applicant has established at best that the term COWBELL is somewhat weak. *In re FabFitFun, Inc.*, Ser. No. 86847381, 2018 TTAB LEXIS 297, at *15 (TTAB 2018) (finding that 10 third-party uses and a dictionary definition of the involved term supported a finding “that the shared phrase SMOKIN’ (SMOKING) HOT is somewhat weak”).

Our assessment of Applicant’s third-party use evidence is consistent with the cases cited by Applicant in its brief. For example, in *In re Garan Servs. Corp.*, Ser. No. 88674888, 2021 TTAB LEXIS 440, at *8-14 (TTAB 2021) (non-precedential), the Board was persuaded by Applicant’s evidence consisting of 55 third-party registrations and 15 third-party websites, finding it sufficient to narrow the scope of protection to which the cited mark was entitled.

Similarly, in *In re Namaste Couture LLC*, Ser. No. 97652794, 2024 TTAB LEXIS 316 (TTAB 2024) (non-precedential), the Board found evidence of 113 instances of the shared term NAMASTE used in both ornamental and source-identifying manners sufficient to establish that the term NAMASTE “is quite weak.” *Id.* at *15-16.

It is true that in *El Burro, Inc. v. Knuckle Sandwich LLC*, Can. No. 92075933, 2023 TTAB LEXIS 190 (TTAB 2023) (non-precedential), the Board relied on less evidence than that presented in the *Garan Servs.* and *Namaste Couture* decisions to arrive at its finding that the cited mark was “commercially on the weaker side of the

¹⁴ “[I]n *Juice Generation*, there were at least twenty-six relevant third party uses or registrations of record, see 794 F.3d at 1337 n.1, and in *Jack Wolfskin*, there were at least fourteen, 797 F.3d at 1373 n.2.” *In re Morinaga Nyugyo K.K.*, Ser. No. 8633839, 2016 TTAB LEXIS 448, at *26 n.8 (TTAB 2016).

spectrum.” *Id.* at *23. While it is well-settled that each case must be assessed on its own facts and records, *in re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”), our finding on the issue of commercial strength of the cited mark is generally consistent with that of *El Burro*.

To summarize, we find that there is no evidence that the cited mark is conceptually weak and that Applicant has established at best the term COWBELL is somewhat commercially weak.

C. Similarity or Dissimilarity of the Marks

We now turn to the first *DuPont* factor, which assesses the similarity or dissimilarity of Applicant’s and Registrant’s marks. *DuPont*, 476 F.2d at 1361. We analyze the marks in their entirety, considering their appearance, sound, meaning and commercial impression. *Id.* See also *Detroit Athletic*, 903 F.3d at 1303. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at *13 (TTAB 2018), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019) (quoting *In re Davia*, Ser. No. 85497617, 2014 TTAB LEXIS 214, at *3-4 (TTAB 2014)).

The test is not whether the marks can be distinguished in 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. *Midwestern Pet Foods, Inc. v. Societe*


des Produits Nestle S.A., 685 F.3d 1046, 1053 (Fed. Cir. 2012). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than specific impression of marks.” *In re i.am.symbolic, llc*, Ser. No. 85916778, 2018 TTAB LEXIS 281, at *11 (TTAB 2018). The average customers here are consumers of ale, which includes members of the general public of legal drinking age.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, our analysis cannot be predicated on dissecting the marks into their various components. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). *See also 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.”). Nonetheless, 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 entirety. *Stone Lion*, 746 F.3d at 1322. The focus is on the recollection of the average purchaser, who normally “retains a general rather than a specific impression of marks.” *In re i.am.symbolic, LLC*, Ser. No. 85916778, 2018 TTAB LEXIS 281, at *11-12 (TTAB 2018).

When considering the marks, we keep in mind that, where, as here, “the goods at issue are identical, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Cai*, 901 F.3d at 1373 (quoting *Viterra*, 671 F.3d at 1363). *See*

also TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) §1207.01(b) (Nov. 2024) and cases cited therein.



Applicant seeks to register its composite mark  (“BLYTH” and “BREWING CO.” disclaimed), whereas Registrant’s mark is COWBELL CREAM ALE in standard characters (“CREAM ALE” disclaimed). The marks are visually similar to the extent that they contain the shared literal element COWBELL, but otherwise have obvious differences to the extent that Applicant’s mark contains the additional literal elements BLYTH and BREWING CO. together with an image of a cowbell, while Registrant’s mark contains the terms CREAM ALE.

As an initial matter and as is typically the case, we find that the literal element COWBELL is the dominant element of Applicant’s mark notwithstanding the accompanying design. *See Viterra*, 671 F.3d at 1366 (“[T]he verbal portion of a word and design mark likely will be the dominant portion.”). Here, the image of the cowbell reinforces the COWBELL literal element and, for that reason, the image is not the dominant portion of the mark. Additionally, the literal element appears in bold and in all capital letters, and in a font size that is much larger than the other literal elements forming the mark. Although we acknowledge that the term COWBELL is not the first term in the mark, its position in the near center of the mark and its physical size render it the dominant element. Moreover, Applicant’s disclaimer of all of the other literal elements, i.e., BLYTH and BREWING CO., further supports our

finding that COWBELL is the dominant element, as descriptive, disclaimed terms have less source-identifying significance. *See e.g., In re Chatam Int'l, Inc.*, 380 F.3d 1340, 1342-43 (Fed. Cir. 2004); *Nat'l Data*, 753 F.2d at 1058 (stating “[t]hat 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”).

We also find that COWBELL is the dominant portion of the mark of the cited registration, as it is the first term in the mark. *See e.g., Century 21 Real Est. Corp. v. Century Life of Am.*, 970 F.2d 874, 876 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, Opp. No. 74797, 1988 TTAB LEXIS 60, at *8 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered[.]”). Moreover, Registrant’s disclaimer of the descriptive and generic terms CREAM ALE supports our finding, as, again, disclaimed terms have less source-identifying significance. *Chatam Int'l*, 380 F.3d at 1342-43; *Nat'l Data*, 753 F.2d at 1058.

Neither Applicant nor the Examining Attorney address the connotation and commercial impressions of the marks. Nonetheless, because the marks are used with identical goods and share the same dominant term COWBELL, and with no argument or evidence to the contrary, we find that the marks have similar connotations and commercial impressions.

Overall, we find the marks to be similar. This is true especially when we keep in mind: (1) “the fallibility of memory over a period of time;” and (2) that the “average” purchaser “normally retains a general rather than a specific impression of trademarks.” *Sealed Air Corp. v. Scott Paper Co.*, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). *See also St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (“marks must be considered in light of the fallibility of memory”) (citation, internal quotation marks, and ellipsis omitted).

D. Balancing the *DuPont* Factors and Conclusion as to Likelihood of Confusion

Having found that the marks are similar, the first *DuPont* factor, therefore, weighs in favor of a likelihood of confusion. Because Applicant and Registrant both identify “ales,” the second and third *DuPont* factors weigh heavily in favor of likelihood of confusion. *See In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 TTAB LEXIS 46, at *4-5 (TTAB 2016) (“The identity in the goods and trade channels therefor, and the overlap in purchasers, are factors that weigh heavily in favor of a finding of likelihood of confusion”). Applicant was successful in establishing that that the term COWBELL is somewhat weak, thus, the sixth *DuPont* factor weighs slightly against likelihood of confusion.

In weighing all of the factors, we find confusion is likely. In arriving at our conclusion, we bear in mind that, where, as here, the goods are identical, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *See e.g., In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 TTAB LEXIS 46, at *7 (TTAB 2016) (citing

Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356, 1368 (Fed. Cir. 2012)).

Thus, we consider the first, second and third *DuPont* factors dispositive and even considering the slight commercial weakness of the COWBELL term, it is not enough to outweigh the other factors.

Decision

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