

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Oral Hearing: May 21, 2020

Mailed: May 27, 2020

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**

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*In re Maryhill AB*

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Serial No. 88102714  
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Jeffrey M. Furr of the Furr Law Firm,  
for Maryhill AB.

Mark T. Mullen, Trademark Examining Attorney, Law Office 111,  
Chris Doninger, Managing Attorney.

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Before Ritchie, Wolfson, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Maryhill AB (“Applicant”) seeks registration on the Principal Register of the



composite mark for “Baguettes; Bread; Bread rolls;  
Breadcrumbs; Buns; Cake batter; Cake doughs; Cake mixes; Cakes; Crushed oats;  
Dough; Food starch; Pancakes; Processed cereals; Tarts; Unleavened bread in thin

sheets; Waffles; Wheat flour; Wheat germ for human consumption; Yeast; Biscuits; Cookies” in International Class 30.<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 mark BREAD FOR EVERYONE (in standard characters; BREAD disclaimed) registered on the Principal Register for “bread” in International Class 30.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, this appeal resumed. Both Applicant and the Examining Attorney filed briefs. An oral hearing was held on May 21, 2020. For the reasons explained below, we affirm the refusal to register.<sup>3</sup>

## **I. Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of

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<sup>1</sup> Application Serial No. 88102714 was filed on September 3, 2018, under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on Swedish Registration No. 548690. The application includes the following description of the mark: “The mark consists of the stylized wording ‘OATES.SE’ appearing in orange and encircled by the stylized wording ‘THE BREAD FOR EVERYONE. ETT BROD FOR ALLA’ appearing in grey.” The application also includes the following English translation statement: “The English translation of ‘ETT BROD FOR ALLA’ in the mark is ‘THE BREAD FOR EVERYONE’.” The colors orange and grey are claimed as a feature of the mark.

<sup>2</sup> Registration No. 4544380, issued on June 3, 2014; renewed.

<sup>3</sup> The TTABVue and Trademark Status & Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor for which there is evidence and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). 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.”).

In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 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)).

#### **A. Similarity of the Goods**

We initially turn to the comparison of the goods under the second *DuPont* factor.

In making our determination regarding the relatedness of the goods, we must look to the goods as identified in Applicant's application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("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.")); *see also In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). Thus, we may not consider Applicant's argument that its goods differ from Registrant's because they are "gluten free"<sup>4</sup> or that they are otherwise limited in some manner not specified in the identification of goods.

Moreover, registration must be refused in a particular class if Applicant's mark for any of its identified goods in that class is likely to cause confusion with the Registrant's mark for any of its identified goods. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

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<sup>4</sup> Applicant's Appeal Brief, p. 6, 7 TTABVUE 7.

Registrant's goods are identified as "bread." Applicant's identification of goods includes "bread." Accordingly, the identifications overlap and are identical with regard to "bread." Moreover, "bread" is defined as "a kind of food made of flour or meal that has been mixed with milk or water, made into a dough or batter, with or without yeast or other leavening agent, and baked."<sup>5</sup> Registrant's broadly worded "bread" encompasses the more limiting nature of the following goods identified in Applicant's involved application: baguettes; bread rolls; buns; unleavened bread in thin sheets; and biscuits.<sup>6</sup> As such, these goods are legally identical in part to Registrant's bread. With regard to Applicant's remaining goods, we have previously found other food items related to baked goods and different types of baked goods related to one another in similar circumstances. *See, e.g., In re Pan-O-Gold Baking Co.*, 20 USPQ2d 1761, 1765 (TTAB 1991) (freshly baked bread and bread rolls found related to muffin mix); *Robert A. Johnston Co. v. Ward Foods, Inc.*, 157 USPQ 204, 206 (TTAB 1968) (frozen pies and frozen cakes found related to cookies and crackers); *In re Continental Baking Co.*, 147 USPQ 333, 333-34 (TTAB 1965) (fresh bread, cake and sweet goods, namely, cinnamon sticks, sweet rolls and assorted pastries found related to frozen fruit and cream pies), *aff'd*, 156 USPQ 514 (CCPA 1968). Accordingly, we conclude that Applicant's and Registrant's goods are legally identical and identical-in-part, and

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<sup>5</sup> www.dictionary.com (based on The Random House Unabridged Dictionary). The Board may take judicial notice of dictionary definitions, including online dictionaries. *See, e.g., In re Omniome, Inc.*, 2020 USPQ2d 3222, \*2 n.17 (TTAB 2020).

<sup>6</sup> Biscuit is defined as "a kind of bread in small, soft cakes, raised with baking powder or soda, or sometimes with yeast." www.dictionary.com (based on The Random House Unabridged Dictionary).

otherwise related.

Accordingly, the second *DuPont* factor strongly favors a finding of likelihood of confusion.

### **B. Similarity of Trade Channels and Classes of Purchasers**

Next we consider established, likely-to-continue channels of trade, the third *DuPont* factor. Because we have found that Applicant's and Registrant's goods are legally identical and legally identical in part, we must presume that these goods travel through the same channels of trade and are offered to the same or overlapping classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

Thus, the third *DuPont* factor also weighs heavily in favor of finding a likelihood of confusion.


### **C. Similarity of the Marks**

We next consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 369 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). "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." *In re i.am.symbolic, LLC*, 123 USPQ2d

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at 1748 (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Moreover, where, as here, the relevant goods are identical and legally identical in part, the degree of similarity between the marks necessary to find a likelihood of confusion declines. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010).



Applicant's mark is . The cited mark is BREAD FOR EVERYONE in standard characters. In challenging the refusal, Applicant maintains that the dominant element in its mark is the term OATES.SE which Applicant contends is very different from the wording in the cited mark.<sup>7</sup> Applicant also argues that the cited mark is highly descriptive of the goods recited in the cited registration.<sup>8</sup> Specifically, Applicant notes that the word BREAD has been disclaimed in the cited

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<sup>7</sup> Applicant's Appeal Brief, p. 4; 7 TTABVUE 5.

<sup>8</sup> *Id.*

mark and argues that the wording “FOR EVERYONE” is a highly descriptive, if not a generic phrase, in connection with Registrant’s goods.<sup>9</sup> Finally, Applicant attempts to distinguish the cases cited by the Examining Attorney, which stand for the legal proposition that likelihood of confusion is often found where the entirety of one mark is incorporated within another, by maintaining that the marks at issue in the cited cases were unique, arbitrary, or famous in nature, while the cited mark is generic in association with the identified goods and, therefore, is entitled to a very narrow scope of protection.<sup>10</sup>

We find Applicant’s arguments unpersuasive. As previously noted, we must base our determination regarding the similarity of the marks on a consideration of the marks in their entireties. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 23, 234 (CCPA 1981). However, 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 as a whole. *In re Nat’l Data Corp.*, 224 USPQ at 751; *see also Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955).

It is clear that Applicant’s mark and the cited mark are not identical because the wording OATES.SE in Applicant’s mark is absent from the cited mark. Although we acknowledge that the wording OATES.SE in Applicant’s mark is visually more

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<sup>9</sup> *Id.* at pp. 4-5; 7 TTABVUE 5-6.

<sup>10</sup> *Id.* at pp. 7-10; 7 TTABVUE 8-11.



prominent, the phrase/slogan THE BREAD FOR EVERYONE in Applicant's mark is nonetheless a salient, distinctive feature of Applicant's mark. It imparts its own separate commercial impression because it stands somewhat apart from the wording OATES.SE and, therefore, must be given due consideration. We find this to be particularly true since the slogan is repeated twice in Applicant's mark, once in English and once in Swedish.

Here, the wording THE BREAD FOR EVERYONE in Applicant's involved mark incorporates Registrant's mark, BREAD FOR EVERYONE, in its entirety. The slight differences in sound and appearance between the two phrases/slogans, due to the presence of the definite article "THE" in Applicant's mark, is so insignificant that it is not likely to be noted or remembered by purchasers when seeing or hearing these slogans at separate times. *See, e.g., In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (definite article THE is a non-distinctive term that adds no source-indicating significance to the mark as a whole). The wording THE BREAD FOR EVERYONE in Applicant's mark is, in effect, just a slightly longer version of Registrant's mark. Thus, Applicant's slogan and the cited mark are virtually identical in sound, appearance, connotation, and overall commercial impression.

As noted, Applicant has incorporated the entirety of Registrant's mark in its applied-for mark. Likelihood of confusion is often found where the entirety of one mark is incorporated within another. *See In re Integrated Embedded*, 120 USPQ 1504, 1513 (TTAB 2016) (citing *In re Denisi*, 225 USPQ 624, 626 (TTAB 1985) (PERRY'S PIZZA for restaurant services specializing in pizza and PERRY'S for restaurant and

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bar services); *Johnson Publ'g Co. v. Int'l Dev. Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner); *In re South Bend Toy Mfg. Co.*, 218 USPQ 479, 480 (TTAB 1983) (LIL' LADY BUGGY for toy doll carriages and LITTLE LADY for doll clothing)). *See also Coca-Cola Bottling Co. of Memphis Tenn., Inc. v. Jos. E. Seagram & Sons, Inc.* 526 F.2d 556, 188 USPQ2d 105, 106 (CCPA 1975) (BENGAL and BENGAL LANCER for closely related goods found confusingly similar).

Notwithstanding the foregoing case law, we recognize that there is no explicit rule that marks are automatically similar where the entirety of the cited mark is incorporated in the junior mark. However, where, as here, there is no evidence of record to demonstrate that the cited mark is either conceptually or commercially weak (such as evidence of third party use or registration of marks identical or similar to the cited mark for identical or similar goods) the cited mark is entitled to the normal scope of protection accorded an inherently distinctive mark. Even if we were to assume that the cited mark is suggestive, it nonetheless remains inherently distinctive as applied to Registrant's goods. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000) (word marks that are arbitrary, fanciful, or suggestive are "held to be inherently distinctive."); *Two Pesos Inc. v. Taco Cabana Inc.*, 505 U.S. 763, 23 USPQ2d 1081, 1083 (1992) (suggestive, arbitrary and fanciful marks are deemed inherently distinctive). And "if the mark is inherently distinctive, it is presumed that consumers will view it as a source identifier." *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1685 (Fed. Cir. 2010). The

fact that the cited mark is subsumed by Applicant's mark only increases the similarity between them. This especially holds true where, as here, the marks are used on goods that are identical and legally identical in part.

Applicant argues that the cases noted above, where one mark has been subsumed by the other, are distinguishable from the circumstances in this case because those cases concerned arbitrary or famous marks while Registrant's mark is generic or merely descriptive of Registrant's goods. Applicant's argument that Registrant's mark is merely descriptive or generic constitutes an impermissible collateral attack of the validity of the cited mark, which we cannot entertain on this ex parte appeal. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1053 (Fed. Cir. 2018); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (applicant's claim that the cited mark was merely descriptive and weak was an impermissible collateral attack on the cited registration). Even if we were to consider Applicant's argument, Applicant has failed to submit any evidence to demonstrate that the cited mark, when viewed in its entirety, is descriptive or generic of Registrant's identified goods, i.e., bread. Notwithstanding, the cited mark is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007), *cited in In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517 (TTAB 2016). As such, we must assume that it is at most suggestive of the goods identified in the cited registration. But as noted, suggestive marks are inherently distinctive and should be

accorded the scope of protection to which inherently distinctive marks are entitled. *See Maytag Co. v. Luskis, Inc.*, 228 USPQ 747, 750 (TTAB 1986) (“there is nothing in our trademark law which prescribes any different protection for suggestive, nondescriptive marks than that which is accorded arbitrary and fanciful marks”); *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 485 (TTAB 1985) (“the fact that a mark may be somewhat suggestive does not mean that it is a ‘weak’ mark entitled to a limited scope of protection”).

We further note that while confusion, mistake or deception about source or origin is the usual issue posed under Section 2(d), any confusion made likely by a junior user’s mark is cause for refusal, including a likelihood of confusion of sponsorship, affiliation or connection. *See Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423, 1429 (TTAB 1993); *see also See In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (“The average consumer, therefore, would be likely to view Mexican food items and Mexican restaurant services as emanating from or sponsored by the same source if such goods and services are sold under the same or substantially similar marks.”); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 n.7 (TTAB 1984) (“It may be appropriate at this point to note, as has been observed by one commentator, that the statutory concept of ‘likelihood of confusion’ denotes any type of confusion, including not only source confusion but also “confusion of affiliation; confusion of connection; or confusion of sponsorship.” (quoting T.J. McCarthy, *op. cit.*, 24.3.B (4 McCarthy on Trademarks and Unfair Competition § 24:6 (4th ed. 2016))).

We find that relevant consumers who are familiar with Registrant's mark and the bread product associated therewith may, upon seeing Applicant's mark that incorporates Registrant's mark in its entirety, believe that Registrant is somehow affiliated or is a sponsor of Applicant's bread products.

With regard to the OATES.SE portion of Applicant's mark, we make the following observations. First, the wording "OATES" appears in larger font than the term ".SE." Second, the bread and baked good products identified in Applicant's application are not limited by the ingredients from which they are made. We therefore assume that Applicant's bread and baked good products are made from all types of ingredients used to make such goods, including oats or oat grains.<sup>11</sup> We further note that the Applicant's identification includes "crushed oats."

Because there is no correct way to pronounce a trademark, *see e.g., In re Viterra Inc.*, 101 USPQ2d at 1912 ("[T]here is no correct pronunciation of a trademark, and consumers may pronounce a mark differently than intended by the brand owner."); *Trak, Inc. v. Traq Inc.*, 212 USPQ 846, 850 (TTAB 1981) ("it is not possible for a trademark owner to control with certainty how purchasers will vocalize their trademarks"), someone who has heard (rather than seen) the OATES portion of Applicant's mark may well pronounce OATES the same as the word "oats." *See In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969); *Interlego v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002); and *In re*

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<sup>11</sup> During oral hearing, Applicant's counsel conceded that Applicant's goods are, in part, made of oats or oat grains.

*Lamson Oil Co.*, 6 USPQ2d 1041 (TTAB 1987). Thus, the term OATES is a phonetic equivalent of the word “oats.” The term “oats” is merely descriptive of Applicant’s “crushed oats,” as well as bread products made from oats. It is well established that a novel spelling or an intentional misspelling that is the phonetic equivalent of a term that is a merely descriptive word or term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive word or term. *In re ING Direct Bancorp*, 100 USPQ2d 1681, 1690 (TTAB 2011) (PERSON2PERSON PAYMENT generic for direct electronic funds transfers); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (holding URBANHOUSING, in standard character form, would be perceived by consumers as the equivalent of the descriptive term URBAN HOUSING, rather than as including the separate word ZING); *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1475 (TTAB 2007) (“The generic meaning of ‘togs’ not overcome by the misspelling of the term as TOGGS. . .”). In view thereof and inasmuch as the term OATES is the phonetic equivalent of the word “oats,” relevant consumers are likely to perceive the OATES portion of the wording OATES.SE in Applicant’s mark as a mere misspelling of Applicant’s actual goods or ingredient of Applicant’s goods, namely, oats. We further take judicial notice of the definition of the designation “.SE” of the wording OATES.SE in Applicant’s mark to mean the Internet country code top-level domain name for Sweden.<sup>12</sup> Since Applicant’s mark also contains Swedish wording, which as noted is simply a translation of the literal element “THE BREAD

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<sup>12</sup> See <https://www.icann.org/en/system/files/files/se-icann-letters-18sep07-en.pdf>. During oral hearing, Applicant’s counsel noted that .SE stands for the Internet country code top-level domain for Sweden.

FOR EVERYONE,” we find that consumers are likely to view Applicant’s mark as a variation on the mark in the cited registration, perhaps with a suggestiveness of Swedish origin or affiliation. As such, upon viewing the more visually prominent OATES.SE portion of Applicant’s mark, relevant consumers, who are familiar with Applicant’s goods, are likely to perceive such wording as merely describing characteristics of or conveying information about Applicant’s identified goods, rather than as a source indicator for the goods.

Finally, Registrant’s mark is in standard characters. A mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 101 USPQ2d at 1909; *In re Mighty Leaf Tea*, 94 USPQ2d at 1260; TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) §1207.01(c)(iii) (October 2018). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a similar mark in typed or standard characters because the word portion could be presented in the same font style, color or size. *See, e.g., In re Viterra Inc.*, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 216 USPQ at 939 (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”). Accordingly, in this case the cited BREAD FOR EVERYONE mark could be displayed in a style similar to Applicant’s involved mark, e.g., the wording appearing in an arc or semi-circle and in the same font as Applicant’s mark. As a result, the stylization of the Applicant’s mark does not overcome the similarity between the marks.

In sum, when viewing the marks in their entireties, we find that



and BREAD FOR EVERYONE are more similar than dissimilar. Moreover, given that the slogan THE BREAD FOR EVERYONE in Applicant's mark and the cited mark BREAD FOR EVERYONE are practically identical, we find the similar commercial impressions between Applicant's mark and the cited mark are sufficient to cause purchasers and prospective purchasers who then encounter the other's mark on the other's goods, to mistakenly believe that these products originate from or are sponsored by the same entity, particularly since the goods at issue are legally identical and legally identical in part.

Accordingly, the first *DuPont* factor favors a finding of likelihood of confusion.

## **II. Conclusion**

We have considered all of the arguments and evidence of record. We find that the Applicant's goods and the goods identified in the cited registration are legally identical and legally identical in part, and are presumed to move in common channels of trade to the same or overlapping classes of consumers. We further find Applicant's mark and the mark in the cited registration are more similar than dissimilar, and no evidence of record establishes that the cited mark is so weak in connection with the goods at issue to overcome the identity of the goods and similarity of the marks. In





view thereof, we conclude that Applicant's mark, as used in connection with the goods identified in its involved application, so resembles the cited mark BREAD FOR EVERYONE for Registrant's identified goods as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.



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