

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: June 16, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Black Ink Coffee Company, LLC
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Serial No. 88570051
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Jeffrey C. Joyce of Eaton Peabody,
for Black Ink Coffee Company, LLC.

Pauline Ha, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Wellington, Heasley, and Allard,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

Black Ink Coffee Company, LLC (“Applicant”) seeks registration on the Principal Register of the mark BLACK INK (in standard characters) for goods ultimately identified as “Coffee beans; Roasted coffee beans; Coffee-based beverages; Ground coffee beans; Green coffee; Unroasted coffee; coffee pods; coffee in pouches for brewing,” in International Class 30.¹

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¹ Application Serial No. 88570051 was filed on August 7, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce.

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the standard character mark BLACK INK, registered on the Principal Register, for "Alcoholic beverages except beers; Wines," in International Class 33,² as to be likely, when used in connection with the goods identified in the involved application, to cause confusion, to cause mistake, or to deceive.

After the refusal was made final, Applicant requested reconsideration and filed a notice of appeal. After the request for reconsideration was denied, the appeal resumed. The appeal is fully briefed.³ For the reasons explained below, we affirm the refusal to register.

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter. Applicant responded to the first Office action with evidence consisting of a printout of "hits" to various searches conducted on the Trademark Electronic Search System ("TESS") database.⁴

² Registration No. 4736190 was issued on May 12, 2015; Sections 8 and 15 declarations accepted and acknowledged.

The refusal under Section 2(d), 15 U.S.C. § 1052(d), with respect to Reg. Nos. 3866256 (BLACK INK DESIGN) and 5106587 (BLACK INK JUST ADD COLOR and Design) was previously withdrawn. May 12, 2022 Office Action at TSDR 1.

³ Applicant's brief is at 6 TTABVUE, while the Examining Attorney's brief is at 8 TTABVUE.

Citations to the examination record refer to the USPTO's online Trademark Status and Document Retrieval ("TSDR") system, by page number. Citations to the briefs refer to the Board's online database, TTABVUE. Before the TTABVUE designation is the docket entry number, and after this designation are the page references, if applicable.

⁴ May 13, 2020 Response to Office Action at TSDR 26-61.

In the Suspension Notice that followed, the Examining Attorney objected to the list of hits and informed Applicant as to how to properly make third-party registrations of record,⁵ and renewed her objection in the next (and final) office action.⁶ In Applicant's responding request for reconsideration, Applicant made of record printouts of 500 third-party registrations ("Exhibit 11") from the USPTO's TSDR database and a corresponding summary ("Exhibit 12");⁷ although Applicant did not address the Examiner's objection, it did state that Exhibit 11 was "**in addition to** the previously submitted ... evidence."⁸ Notably, the registration printouts attached as Exhibit 11 and the list of "hits" do not correspond. Therefore, when denying Applicant's request for reconsideration, the Examining Attorney maintained her objection to the list,⁹ and she also maintained her objection on appeal.¹⁰

In its brief on appeal, Applicant does not address the issue of the list of "hits," instead addressing only the third-party registration printouts attached as Exhibit 11 and the corresponding summary thereof (Exhibit 12).¹¹

⁵ June 2, 2020 Suspension Notice at TSDR 1.

⁶ May 12, 2022 Office action at TSDR 1.

⁷ October 25, 2022 Request for Reconsideration, Exhibit 11 at TSDR 5-1354; Exhibit 12 at TSDR 1355-1418.

⁸ October 25, 2022 Request for Reconsideration at TSDR 2 (emphasis added).

⁹ November 8, 2022 Denial of Request for Reconsideration at TSDR 3.

¹⁰ Examining Attorney's brief at TSDR 2.

¹¹ The Examining Attorney has not objected to the summary. Therefore, we will consider it to the extent that the registrations summarized in it were properly made of record. *Cf. Bass Pro Trademarks, LLC v. Sportsman's Warehouse, Inc.*, 89 USPQ2d 1844, 1848 (TTAB 2008).

The objection is sustained. It is well-settled that the submission of a mere list of registrations does not make such registrations of the record. *See In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1405 n.17 (TTAB 2018) (“The Board does not take judicial notice of registrations and a list of registrations does not make those registrations of record. ... [T]he list does not include enough information to be probative. The list includes only the serial number, registration number, mark, and status (live or dead) of the applications or registrations. Because the goods are not listed, we do not know whether the listed registrations are relevant.”); *see also Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012).

II. 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 confusion enunciated in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont* factors”). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re i.am.symbollic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017); *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.”). 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). Here, the Examining Attorney addresses the first and second *DuPont* factors, while Applicant limits its discussion to the second, arguing that in this case, it is the “determining factor.”¹²

A. Similarity of the Marks

Under the first *DuPont* factor, we consider “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s*, 126 USPQ2d at 1746 (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019).

Applicant’s mark BLACK INK in standard characters is identical to the cited mark BLACK INK, which is registered in standard character format. The term BLACK INK has no demonstrated meaning in the context of coffee or alcoholic beverages. Applicant does not argue otherwise, or even address this factor in its brief.

The marks are identical in appearance, sound, connotation and commercial impression. Thus, the identity of the marks strongly favors a finding of likelihood of confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir.

¹² Applicant’s brief, p. 6 (6 TTABVUE 7).

1993) (“The identity of words, connotation, and commercial impression weighs heavily against the applicant.”).

B. Similarity or Dissimilarity and Nature of the Goods

The second *DuPont* factor addresses the “similarity or dissimilarity and nature of the goods ... as described in an application or registration....” *DuPont*, 177 USPQ at 567. Where identical marks are involved, as is the case here, the degree of similarity between the goods required to support a finding of likelihood of confusion declines. *Shell Oil*, 26 USPQ2d at 1689 (“[E]ven when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source.”).

The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or ... the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012).

Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; or copies of prior use-based registrations of the same mark for both applicant’s goods and the goods listed in the cited

registration. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *5 (TTAB 2020); accord *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in an application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

First, the Examining Attorney made of record fifteen third-party webpages demonstrating that the same entity commonly offers both alcoholic beverages (except beer) or wine and also coffee, or other coffee-based goods, under the same mark:

- KAHLÚA showing the same mark used for alcoholic beverages, such as liqueur, and also coffee pods and coffee-based beverages, such as, espresso martinis, Kahlúa cold brew soda, Kahlúa ginger ale and Kahlúa iced coffee;¹³
- MCMENAMINS showing the same mark used for alcoholic beverages, such as gin, and also coffee beans;¹⁴
- STARBUCKS showing the same mark used for alcoholic beverages, such as liqueurs, and also coffee beans, coffee-based beverages (such as bottled frappuccino), and coffee pods;¹⁵
- TWO BROTHERS showing the same mark used for alcoholic beverages, such as vodka and canned cocktails containing vodka, and also coffee beans;¹⁶
- H&L showing the same mark used for wine and also coffee beans;¹⁷

¹³ November 14, 2019 Office Action at TSDR 12-13.

¹⁴ *Id.* at TSDR 14-20.

¹⁵ *Id.* at TSDR 21, 26-27.

¹⁶ *Id.* at TSDR 28-35.

¹⁷ May 12, 2022 Office Action at TSDR 2.

- HOODSPORT showing the same mark used for wine and coffee beans;¹⁸
- JACK DANIEL'S showing the same mark used for alcoholic beverages, such as whiskey, and hard cider, and also roasted coffee beans;¹⁹
- MARGARITAVILLE showing the same mark used for alcoholic beverages, such as rum, tequila and margarita mix, and coffee pods;²⁰
- ST. AUGUSTINE showing the same mark used for alcoholic beverages, such as bourbon, and also ground coffee beans;²¹
- BILTMORE showing the same mark used for wine and ground coffee beans;²²
- CHERRY REPUBLIC showing the same mark used for wine and ground coffee beans;²³
- HARRY & DAVID showing the same mark used for wine and also coffee beans, ground coffee beans, and coffee pods;²⁴
- NEWMAN'S OWN showing the same mark used for wine, and also coffee beans and coffee pods;²⁵
- BLANTON'S showing the same mark used for alcoholic beverages, namely, bourbon, and also ground coffee beans;²⁶ and
- EVAN WILLIAMS showing the same mark used for alcoholic beverages, namely, bourbon, and also roasted coffee beans.²⁷

¹⁸ *Id.* at TSDR 3-4.

¹⁹ *Id.* at TSDR 5-6.

²⁰ *Id.* at TSDR 7-8.

²¹ November 8, 2022 Denial of Request for Reconsideration at TSDR 2-3.

²² *Id.* at TSDR 4-5.

²³ *Id.* at TSDR 6.

²⁴ *Id.* at TSDR 7-8.

²⁵ *Id.* at TSDR 9-10.

²⁶ *Id.* at TSDR 11-12.

²⁷ *Id.* at TSDR 13-14.

Second, the Examining Attorney made of record evidence consisting of 15 third-party, use-based registrations that cover the goods of both Applicant and Registrant, the following of which are representative:

- TERP (Reg. No. 5166429) for (i) “Coffee; Coffee beans; Ground coffee beans; Coffee capsules containing coffee for brewing; Coffee based beverages; Iced coffee; Instant coffee,” and (ii) “Spirits and liqueurs; Wine; Sake; Aperitifs; Alcoholic punches; Alcoholic beverages except beer;”²⁸
- UBC (Reg. No. 5381909) for (i) “Coffee,” and (ii) “Distilled Spirits; Mead; Wine; Hard cider;”²⁹
- Lines Design mark (Reg. No. 6583871) for (i) “coffee; coffee-based beverages,” and (ii) “wine;”³⁰
- SHARED NOTES (Reg. No. 6092267) for (i) “Coffee,” and (ii) “Alcoholic beverages except beers;”³¹
- BLACK MOMMA (Reg. No. 6108002) for (i) “Coffee,” and (ii) “Alcoholic mixed beverages except beers; Alcoholic beverage produced from a brewed malt base with natural flavors; Alcoholic beverages containing fruit; Alcoholic beverages, namely, digestifs; Alcoholic beverages, namely, flavor-infused whiskey; Alcoholic carbonated beverages, except beer; Alcoholic coffee-based beverage; Alcoholic tea-based beverage; Liquor and liqueur beverages, namely, vodka; Rum-based beverages; Spirits and liqueurs; Sugarcane-based alcoholic beverages; Vodka; Wine-based beverage, namely, piquette; Distilled spirits; Flavored brewed malt beverage; Flavored malt-based alcoholic beverages, excluding beers; Rum;”³²
- CLARK GABLE (Reg. No. 6695501) for (i) “Coffee; Coffee based beverages; Coffee beans; Coffee drinks; Coffee pods; Beverages made of coffee; Iced coffee; Prepared coffee and coffee-based beverages,” and (ii) “Whiskey; Wine; Distilled spirits;”³³

²⁸ November 14, 2019 Office Action at TSDR 62-64.

²⁹ *Id.* at TSDR 65-67.

³⁰ May 12, 2022 Office Action at TSDR 13-15.

³¹ *Id.* at TSDR 16-17.

³² *Id.* at TSDR 21-23.

³³ *Id.* at TSDR 26-28.

- AGGIELAND OUTFITTERS THE BEST OF TEXAS COLLEGE STATION, TX & Design (Reg. No. 6468799) for (i) “Coffee,” and (ii) “Wine;”³⁴
- THIN RED LINE (Reg. No. 6247638) for (i) “Coffee,” and (ii) “Wine;”³⁵ and
- NIGHT SHIFT BREWING (Reg. No. 6564436) for (i) “Coffee; Coffee beans,” and (ii) “Hard cider; Hard seltzer.”³⁶

Although active, third-party registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind that may emanate from a single source under a single mark. *See, e.g., Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1432 (TTAB 2013) (finding that third-party registrations covering both wine and water were probative of the relatedness of those beverages); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (21 third-party registrations probative of relatedness of subject goods).

Based on the foregoing evidence and discussion, we find that Applicant’s goods and the goods of the cited registration are commercially related. *See, e.g., In re C.H. Hanson Co.*, 116 USPQ2d 13351, 1355-56 (TTAB 2015) (six websites showing sale of the subject goods, coupled with five third-party registrations of marks for them, “support the conclusion that the goods are related”); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265-66 (TTAB 2011) (relying on some 20 third-party registrations

³⁴ November 8, 2022 Denial of Request for Reconsideration at TSDR 15.

³⁵ *Id.* at TSDR 18.

³⁶ *Id.* at TSDR 19.

listing wine and beer and webpages showing that companies make and sell both types of goods, finding: “The third-party registration evidence and the website evidence together amply demonstrate the relatedness of beer and wine”); *Davey Prods.*, 92 USPQ2d at 1203 (two websites showing sale of the subject goods, coupled with 21 third-party registrations of marks for them, supported finding of relatedness).

Applicant does not contest the Examining Attorney’s evidence but rather seeks to rebut it, arguing that “certain broad classes of goods may be so crowded that similar marks may even be used on competing products sold to the same class of consumers[,]” and that alcoholic beverages is one such broad class.³⁷ Applicant points to three prior decisions, where it argues “very similar marks were allowed to be registered on competing alcoholic beverages because, even though the beverages contained alcohol, the specific goods (vodka and wine; beer and wine; prepared cocktails and brandy) were found to be unrelated and sufficiently dissimilar.”³⁸

Specifically, Applicant relies on *In re White Rock Distilleries, Inc.*, 92 USPQ2d 1282 (TTAB 2009), wherein the refusal to register the application was reversed because the Board did not find sufficient evidence to establish that vodka and wine were related.³⁹ Similarly, Applicant relies on *G. H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635 (Fed. Cir. 1990), and *Nat’l Distillers and Chem. Corp. v. William Grant & Sons, Inc.*, 505 F.2d 719, 184 USPQ 34 (CCPA

³⁷ Applicant’s brief, p. 7 (6 TTABVUE 8).

³⁸ *Id.* at 8 (6 TTABVUE 9).

³⁹ *Id.* at 7 (6 TTABVUE 8).

1974) for similar propositions, i.e., that their respective records did not support a finding that the alcoholic beverages at issue were commercially related.⁴⁰ It follows then, Applicant contends, “that if different forms of alcohol are not so related as to cause consumer confusion that there is no such risk between alcoholic beverages and coffee beans.”⁴¹

Continuing, Applicant argues that “this particular distinction has resulted in hundreds of separate registrations for similar or even identical marks on beer/wine/alcohol to one party and to coffee and coffee-based goods to another.”⁴² In support of this argument, Applicant points to its Exhibit 11, and its corresponding summary at Exhibit 12, “listing 500 registrations where 250 *identical* marks were allowed to be registered for beer/wine/alcohol to one party and coffee and coffee-based goods to another[.]”⁴³ Based on this evidence, Applicant concludes that “these are not the type of goods that are likely to emanate from the same source or that consumers would expect to emanate from the same source, and if neither vodka nor beer are similar to wine – neither is coffee.”⁴⁴

We disagree. Even though certain alcoholic beverages have not been found to be related based on the evidentiary records presented in other cases, we must decide the outcome of this appeal based on the record before us. *In Anheuser-Busch, LLC v.*

⁴⁰ *Id.* at pp. 7-8 (6 TTABVUE 8-9).

⁴¹ *Id.* at p. 8 (6 TTABVUE 9).

⁴² *Id.* (6 TTABVUE 9).

⁴³ *Id.* (6 TTABVUE 9).

⁴⁴ *Id.* (6 TTABVUE 9).

Innvopak Sys. Pty Ltd., 115 USPQ2d 1816, 1827 (TTAB 2015) (“[E]ach case must be decided on its own record.”). Put another way, Applicant cannot avoid a finding of relatedness by relying on factual findings made in other decisions on different records, particularly where, as here, the Examining Attorney has made ample evidence of record on which to find relatedness. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the [US]PTO’s allowance of such prior registrations does not bind the [Trademark Trial and Appeal] Board or this court.”); *In re Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006) (each application for registration must be considered on its own).

Further, Applicant’s evidence in the form of third-party marks that are registered to different entities for both alcoholic beverages except beer, or wine, on the one hand, and also coffee-based goods, on the other, i.e., Exhibit 11, is unpersuasive for several reasons. First, at least one mark, WOLFGANG PUCK, appears to be the subject of two registrations that are owned by related entities, as the registrants have similar names (Wolfgang Puck Licensing LLC and WP Licensing Trust) and are represented by the same lawyer.⁴⁵ Second, the summary lists registrations that identify goods

⁴⁵ These registration printouts are attached to the October 25, 2022 Request for Reconsideration at TSDR 30-35. They are shown on the summary at TSDR 1357.

that are not relevant, such as “tea”⁴⁶ and “ice milk.”⁴⁷ Although MADRIGAL, DON FRANCISCO and CHATA are listed on the summary as relevant because they are registered for “ice milk,” the registrations actually exclude ice milk;⁴⁸ but, in the end, they are equally irrelevant, as Applicant has not explained, argued or presented evidence that “tea,” or “ice milk,” for example, is related to “coffee.”

Finally, some of the pairs of registered marks in Exhibit 11 cannot be considered identical, or even similar, such as:



Similarly, we do not find the following two marks to be “identical” or to even make the same commercial impression:



⁴⁶ The following marks are registered for tea: CHIEF’S CHOICE, MAYA and MARYLAND CLUB. October 25, 2022 Request for Reconsideration at TSDR 48, 60, 120. They are shown on the summary at TSDR 1357, 1358, 1361.

⁴⁷ The following mark is registered for “ice milk”: PEARL RIVER BRIDGE and Design. October 25, 2022 Request for Reconsideration at TSDR 82-83. It is shown on the summary at TSDR 1359.

⁴⁸ October 25, 2022 Request for Reconsideration at TSDR 54, 131, 148. They are shown on the summary at TSDR 1358, 1362.

⁴⁹ October 25, 2022 Request for Reconsideration at TSDR 66-71. They are shown on the summary at 1358.

⁵⁰ October 25, 2022 Request for Reconsideration at TSDR 109-14. They are shown on the summary at 1360-61.

Regardless, Applicant's third-party registrations have less probative value than the Examining Attorney's third-party registration evidence because there is no requirement that for goods to be related that all or even a majority of the sources of one good must also be sources of the other goods. Therefore, evidence showing only that the source of one good sometimes may not be the source of other goods does not aid Applicant in its attempt to rebut the Examining Attorney's evidence. *In re G.B.I. Tile and Stone, Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009) (sets of third-party registrations for the same or similar marks for one of the goods at issue does not rebut third-party registrations for both goods). *See also Kysela Pere*, 98 USPQ2d at 1265.

Further, Applicant's third-party registration evidence is outweighed by the Examining Attorney's third-party registration and marketplace use evidence establishing that Applicant's coffee-based goods are commercially related to "alcoholic beverages except beer; wine." It is well-settled that each application stands on its own record and the Board is not bound by the allowance of different marks on different records.

Moreover, to the limited extent that essentially identical registered marks coexist for alcoholic beverages (except beer) and wine, and also for coffee-based goods, we lack contextual information about the underlying marketplace at the time of registration of each pair and any consent agreements or other considerations that may be distinguishable from the case at hand. The mere existence of these pairs of registrations "does not prove that they coexisted during that time without confusion in the marketplace." *In re Thomas*, 79 USPQ2d 1021, 1028 (TTAB 2006).

We turn now to Applicant’s argument and related website evidence that suggests “[Registrant] is an importer and maker of specialty bottled wines.”⁵¹ To the extent Applicant seeks to limit the identification of Registrant’s goods to “specialty bottled wines” through extrinsic evidence, this is not persuasive, as we may not limit the identification of Registrant’s goods through extrinsic evidence. *In re Embiid*, 2021 USPQ2d 577, at *28 (TTAB 20221) (“[W]e may not import restrictions into the identification[s] based on alleged ‘real world conditions’ of the sort argued by Applicant, or consider extrinsic evidence regarding Applicant and Registrant themselves.”) (internal citation omitted); *In re FCA US LLC*, 126 USPQ2d 1214, 1217 (TTAB 2018) (“Evidence of actual marketplace usages that seeks to limit or alter the usages encompassed by the marks, goods and services, or usages listed in the application and registration are not considered in assessing likelihood-of-confusion in the registration context.”); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1646 (TTAB 2008) (“[I]t is the identification of goods that controls, not what extrinsic evidence may show about the specific nature of the goods.”). Rather, we must compare the goods as described in the cited registration and involved application.

In sum, the second *DuPont* factor weighs in favor of a finding of likelihood of confusion.

⁵¹ Applicant’s brief, p. 5 (6 TTABVUE 6).

C. Balancing the Factors

On balance, the relevant *DuPont* factors favor a finding of likelihood of confusion. The marks at issue are identical and the goods are related. We therefore conclude that Applicant's mark, as used in connection with the goods identified in the application, so resembles the mark of the cited registration for the goods identified therein as to be likely to cause confusion or mistake, or to deceive, under Section 2(d) of the Trademark Act.

III. Decision

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