

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

Mailed: March 24, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Florentina Iulia Vaida*  
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Serial No. 90029026  
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Francis John Ciaramella of Francis John Ciaramella PLLC,  
for Florentina Iulia Vaida.

Danielle Anderson, Trademark Examining Attorney, Law Office 113,  
Myriah Habeeb, Managing Attorney.

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Before Kuhlke, Greenbaum and Coggins,  
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:


Florentina Iulia Vaida (“Applicant”) seeks registration on the Principal Register



of the mark for numerous goods in five International Classes including “cosmetics,” “fragrances” and “cosmetic sun-protecting preparations” in Class 3, “jewelry” and “watches” in Class 14, “handbags” and “purses” in Class 18,

“towels,” “sheets,” “bedding” and “blankets” in Class 24, and “trousers,” “sweaters,” “tee shirts,” “footwear,” “shoes” and “beach shoes” in Class 25.<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 that Applicant’s mark, when used on the identified goods, so resembles the registered

mark , which is the subject of four registrations, each in a single International Class and owned by one Registrant, for goods including “handbags” and “purses” in Class 18; “sweaters,” “slacks,” “T-shirts” and “footwear” in Class 25; and “wholesale and retail store services and online wholesale and retail store services and retail store outlets, all the aforesaid services featuring clothing, clothing accessories, footwear... in the nature of shirts, t-shirts, tank tops, blouses and tops, sweaters, ... shoes, boots, sandals and flip flops,” and many other goods that are the same as, or nearly the same as, goods identified in the application, including “sunscreens, sunblock and sun protection, lip protection,” “jewelry,” “handbags” and “purses,” and “towels” in International Class 35, as to be likely to cause confusion, mistake or deception.<sup>2</sup>

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<sup>1</sup> Application Serial No. 90029026 was filed on June 30, 2020 under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on European Union Registration No. 018193340, which issued on May 22, 2020. The application includes the following description of the mark: “The mark consists of two concentric circles. Within the innermost circle, the line forming the innermost circle terminates into two arch designs with one being rotated 180 degrees from the other. In between the concentric circles is a repeating Greek Roman Key border design.” Color is not claimed as a feature of the mark.

<sup>2</sup> Reg. No. 2622308 issued on September 17, 2002 for the Class 25 goods; Reg. No. 3431087 issued on May 20, 2008 for the Class 18 goods; Reg. No. 5026011 issued on August 23, 2016 for the Class 35 services; and Reg. No. 5441042 issued on April 10, 2018 for additional goods in Class 18, such as “glasses” and “protective sporting accessories, namely, mouth guards,

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 reverse the refusal to register.

### I. Applicable Law – Likelihood of Confusion

Our determination under Trademark Act Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (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, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *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

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protective helmets, head guards and knee guards,” and in Class 28, such as “shin guards, elbow guards, knee guards,” and “bags and covers specially adapted for sporting goods.” We mention Reg. No. 5441042 here but do not list the additional goods in the text of this decision because they are not as close to Applicant’s identified goods as are the goods and services in the other three cited registrations, and we do not rely on this registration in our likelihood of confusion analysis. *See, e.g., Fiserv, Inc. v. Elect. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015) (focusing on most relevant pleaded registration for likelihood of confusion analysis); *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (same).

Reg. Nos. 2623308, 3431087 and 5026011 have been maintained.

Reg. No. 2623308 does not include a description of the mark. Reg. No. 3431087 describes the mark as “a stylized chevron and inverted chevron.” Reg. No. 5026011 describes the mark as “two stylized chevrons with one inverted.” Reg. No. 5441042 describes the mark as “consist[ing] of the letters ‘V’ and ‘A’ as a stylized chevron and an inverted chevron.” None of the four registrations includes a claim of color as a feature of the mark.

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)). However, in any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/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.”).

A. Similarity or Dissimilarity of the Goods and Services, Channels of Trade and Conditions of Sale

Under these *DuPont* factors, we compare the goods and services as they are identified in the application and the cited registrations. See *In re Detroit Athl. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); see also *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). We keep in mind that the Examining Attorney need not prove likelihood of confusion as to each good in each class identified in Applicant’s five-class application; if there is a likelihood of confusion as to any of Applicant’s identified goods within a particular class vis-à-vis the goods or services identified in any of the cited registrations, the refusal of registration must be affirmed for the entire class of goods. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015), *aff’d*, 123 USPQ2d 1744 (Fed. Cir. 2017).

1. Goods and Services, and Channels of Trade

Here, the application and Reg. No. 3431087 identify identical “handbags” and “purses” in Class 18, and the application and Reg. No. 2622308 identify identical “sweaters” and “T-shirts”/“tee shirts,” as well as legally identical “footwear, namely pumps” and “footwear” in Class 25. Moreover, because the identified goods are identical or legally identical in part and there are no limitations as to the channels of trade or classes of purchasers, we must presume that the Class 18 and Class 25 goods identified in the application and foregoing cited registrations will be offered in the same channels of trade to the same classes of consumers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

The application also identifies “cosmetics sun-protecting preparations” in Class 3, “jewelry” and “watches” in Class 14, and “towels” in Class 24, while Reg. No. 5026011 identifies “wholesale,” “retail” and “online” stores featuring these goods (among others). It is well established that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other. *See, e.g., Detroit Athl.* 128 USPQ2d at 1052 (clothing and sports apparel retail services related as “confusion is likely where one party engages in retail services that sell goods of the type produced by the other party”); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988) (BIGGS for retail grocery and general merchandise store services likely to be confused with BIGGS for furniture); *In re United Serv. Distributions, Inc.*, 229 USPQ 237 (TTAB 1986) (mark

depicting silhouette of a man and woman, used in connection with distributorship services in the field of health and beauty aids, likely to cause confusion with visually similar silhouette mark used in connection with skin cream).

The record supports such a finding here. The Examining Attorney submitted excerpts from third-party websites showing goods of the type identified in Classes 3, 14 or 24 of the application and Class 35 services of the type identified in Reg. No. 5026011 offered under the same mark. For example, the Calvin Klein, Coach and Ralph Lauren retail websites offer for sale watches or jewelry as well as towels under their respective marks, and the Beauty Counter, Neutrogena and Ulta retail websites offer for sale sunscreen under their respective marks. October 8, 2020 Office Action, TSDR 21 and 25 (Calvin Klein), 33, 35-36 (Coach), 58-59 (Ralph Lauren), 63 (Beauty Counter), 68 (Neutrogena) and 71 (Ulta). This website evidence is probative of the relatedness of the identified goods and services. *See, e.g., In re C.H. Hanson Co.*, 115 USPQ2d 1351, 1355-56 (TTAB 2015); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009).

Because the identification of goods in the application and the identification of services in Reg. No. 5026011 contain no limitations as to channels of trade and classes of purchasers, it is presumed that the Class 3, 14 and 24 goods identified in the application move in all channels of trade normal for those goods, such as the Class 35 online retail store services identified in the registration, and that they are available to all classes of purchasers for those goods and services, including members of the general public. *See Stone Lion*, 110 USPQ2d at 1161; *see also Coach Servs., Inc. v.*

*Triumph Learning LLC*, 558 F.3d 1356, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (absent limitation, “goods are presumed to travel in all normal channels ... for the relevant goods.”); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). As neither the application nor the registration contains limitations as to the channels of trade or classes of purchasers, and in light of the above-discussed evidence of third party commercial websites showing that retailers such as Calvin Klein, Ralph Lauren, Neutrogena and Ulta offer one or more of the Class 3, 14 and 24 goods identified in the application through their online retail stores, such as those identified in Reg. No. 5026011, we find the channels of trade and classes of purchasers to be the same. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012); *see also In re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (deeming channels of trade and classes of purchasers to be the same for jewelry and jewelry stores when the application and registration contain no limitations).

## 2. Conditions of Sale

Next, we consider the fourth *DuPont* factor, “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing,” *DuPont*, 177 USPQ at 567. Applicant argues that the identified goods and services “can be extremely expensive,” and the consumers for such goods and services are “sophisticated” and “not likely to make such purchases on impulse.” App. Br., 6 TTABVUE 14-15. As evidence, Applicant points to photographs of “Applicant’s high end designer shoes.” *Id.* at 14 (referencing Applicant’s June 16, 2022 Request for Reconsideration, TSDR 53-56).

The photographs, which only pertain to the Class 25 goods, do not include any pricing information. But even if that information had been included, it would not affect our analysis: an applicant may not restrict the scope of the goods covered in its application (or the cited registrations) by argument or extrinsic evidence. *Octocom Sys. Inc. v. Hous. Comput. 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.”)). Because the identification of goods in the application is not limited by price point, we cannot so limit or restrict the goods, but rather must consider the products to include both expensive and inexpensive varieties, subject to casual, impulse purchases. There is nothing in the nature of Applicant’s goods or Registrant’s goods and services, none of which are limited as to their types, price points or intended consumers, to suggest their purchasers are particularly sophisticated or careful. *See I-Coat Co.*, 126 USPQ2d 1730, 1739 (TTAB 2018). In fact, the standard of care is that of the least sophisticated potential purchaser. *Stone Lion*, 110 USPQ2d at 1163.

Moreover, the record shows that many of the goods identified in the various Classes in the application are relatively inexpensive, and are of the type that consumers buy regularly and also could buy on impulse. For example, screenshots from Amazon show vendors offering a t-shirt (and other shirts) for under \$4.00,



various costume jewelry for \$.01, handbags and purses for \$5-\$7, sheets for \$4-\$7, towels for \$.01-\$1.44, and cosmetics and fragrances for \$1.99-\$9.97. December 16, 2021 Final Office Action, 243-263. As to the more modestly priced products, “[w]hen products are relatively low-priced and subject to impulse buying, the likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000).

These *DuPont* factors favor a finding of likelihood of confusion.

B. The similarity or dissimilarity of the marks


We compare the marks “in their entirety as to appearance, sound, connotation and commercial impression.” *Detroit Athl.*, 128 USPQ2d at 1048 (quoting *DuPont*, 177 USPQ at 567); *see also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 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.” *i.am.symbolic*, 123 USPQ2d at 1748 (quoting *Coach Servs.*, 101 USPQ2d at 1721).

Because similarity is determined based on the marks in their entirety, our analysis is not predicated on dissecting the marks into their various components. *Stone Lion*, 110 USPQ2d at 1161 (Fed. Cir. 2014). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (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.”). Further, the marks “must be considered ... in light of the fallibility of memory ....” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quotation omitted). We focus on the recollection of the average consumer – here, an ordinary consumer – who normally retains a general rather than a specific impression of trademarks. *Id.*; *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971).

Here, despite our findings above concerning the identified goods and services, their channels of trade, and the conditions of sale, we find that confusion is not likely because of the crucial differences between the marks. *See Odom’s Tenn. Pride Sausage, Inc. v. FF Acquisition, LLC*, 600 F.3d 1343, 93 USPQ2d 2030, 2032 (Fed. Cir. 2010) (“[E]ven if all other relevant *DuPont* factors were considered in [opposer’s] favor, as the board stated, the dissimilarity of the marks was a sufficient basis to conclude that no confusion was likely.”); *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d 1386, 9 USPQ2d 1736, 1739 (Fed. Cir. 1989) (agreeing with the Board that the “more important fact for resolving the issue of likelihood of confusion in this case is the dissimilarity in commercial impression between the marks”). *Cf. Coach Servs.*, 101 USPQ2d at 1722) (where goods or services are identical or legally identical in part, “the degree of similarity necessary to support a conclusion of likely confusion declines.”).




We first consider Registrant’s mark . As set forth above, the description of the mark in two of the cited registrations simply refers to the mark as comprising inverted chevrons, the earliest-issued registration does not have a description of the mark, and the most recently issued cited registration (which we again note, but on which we do not rely) refers to the mark as consisting of the letters “V” and “A” as stylized and inverted chevrons. *See* n.2 *supra*. Both Applicant and the Examining Attorney consistently refer to this mark as the stylized letters “VA.” *E.g.*, App. Br., 6 TTABVUE 5, 8, 12; Ex. Atty. Br., 8 TTABVUE 3, 5, 8-10. When viewed as a whole, we find Registrant’s mark conveys the impression of flipped mirror image chevrons or capital letters “V” that resemble the stylized capital letters “VA.”

There is no evidence that “VA” has any meaning or significance when applied to the identified goods or services, and there is no evidence of use or registration by third parties of similar marks on similar goods or services that might dilute the source-identifying capacity of “VA” for those goods and services.<sup>3</sup> *Cf. Juice Generation, Inc.*

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<sup>3</sup> Under the sixth *DuPont* factor, the “number and nature of similar marks in use on similar goods,” *DuPont*, 177 USPQ at 567, Applicant points to approximately eight third-party use-based registrations for VA-inclusive marks for goods in Class 25, and five third-party use-based registrations, owned by a single registrant, for the standard character mark AV for goods in Classes 3, 9, 14 and 18, as evidence that the term “VA” is conceptually weak. June 16, 2022 Request for Reconsideration, TSDR 58-71. However, all of the VA-inclusive marks contain distinguishing matter, such as additional wording or a design, or both. In each instance, the additional matter results in a mark with a different commercial impression from the cited registered mark, which undercuts their probative value. *E.g.*, Reg. No. 6233971

for the mark “VA VIVAIA” displayed as ; Reg. No. 5940461 for the mark

VA BEACH WEAR; Reg. No. 5116055 for the mark  (described as “a stylized capital letter ‘V’ intertwined with a stylized capital letter ‘A’”). *Id.*, at TSDR 58, 60-61. Likewise, the third-

*v. GS Enters LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015) (both considering, in the likelihood of confusion analysis, evidence of third-party use and registration of a term in the relevant industry).



Looking at Applicant's mark  in its entirety, we find that the center is part of an abstract maze without an exit, leading the consumer's eye to the "repeating Greek Roman Key border design" within the outer circle and forming an integrated whole. Purchasers may also view the interior portion of the mark variously as flipped mirror image stylized letters "V," arch designs or chevron designs, which continue partially around the inner circle and which are visually connected to the "repeating Greek Roman Key border design" within the outer circle at approximately the 10:00

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party registered mark "AV" lacks probative value because the mark is not similar to the cited registered mark. *Cf. Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (third-party registrations "may be given some weight to show the meaning of a mark in the same way that dictionaries are used"); *Institut Nat'l Des Appellations D'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992) ("Third party registrations show the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services."). Applicant submitted no evidence of third-party uses of the term "VA." *See In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1745 (TTAB 2016) ("Applicant's citation of third-party registrations as evidence of market weakness is unavailing because third-party registrations standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences."). The sixth *DuPont* factor is therefore neutral in our analysis.

and 4:00 positions of the face of a clock, at the points where the black lines forming the inner circles are broken, again forming an integrated whole.

The Examining Attorney refers to Applicant's mark as containing the stylized letters "VA" with a design element, *e.g.*, Ex. Atty. Br., 8 TTABVUE 2 ("VA," (design mark)), 8 TTABVUE 5 ("VA' with design"), 8 TTABVUE 7 ("VA in stylized text with a design"), rather than as a design mark.<sup>4</sup> We acknowledge that the "Mark Information" section of the application's USPTO electronic record indicates that the "Mark Literal Elements" are "VA," and the "Mark Drawing Type" is "3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/LETTER(S)/NUMBER(S)." However, during prosecution and in its Appeal Brief, Applicant consistently maintained that these entries are erroneous, and the EU Registration on which the Application is based states that the EU Registration is for a mark **without text** (emphasis added by Applicant consistently), that is, the foreign registration is for a design mark with no literal elements. April 8, 2021 Response to

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<sup>4</sup> We note that the Examining Attorney withdrew a final requirement that Applicant amend the description of the mark to include a reference to the "stylized letters 'VA'." June 30, 2022 Request for Reconsideration Denied, TSDR 4; December 16, 2021 Final Office Action, TSDR 1. The description of the mark in the Application, stated in n.1 supra, does not include any reference to a literal element. *See* TRADEMARK MANUAL OF PROCEDURE ("TMEP") § 808.02 (2022): "The description should describe all *significant* aspects of the mark, including both literal elements and design elements. Insignificant features need not be included in a description." ... "A description cannot be used to restrict the likely public perception of a mark. A mark's meaning is based on the impression actually created by the mark in the minds of consumers, not on the impression that the applicant states the mark is intended to convey. However, an examining attorney may defer to the applicant's phrasing of a description, so long as the description is accurate and complete. For example, if an element in a mark could reasonably be characterized in more than one way, the examining attorney should accept the applicant's selection of one characterization over the other in the description."

Office Action, TSDR 8; November 12, 2021 Response to Office Action, TSDR 8; June 16, 2022 Request for Reconsideration, TSDR 8; App. Br., 6 TTABVUE 10-11 (also explaining that the “Mark Drawing Type” should be “Type 2,” “AN ILLUSTRATION DRAWING WITHOUT ANY WORD(S)/LETTER(S)/NUMBER(S).”). Indeed, the English translation of the foreign registration states that the mark is “Figurative,” and there is no mention of any literal element. Application, TSDR 3. While we do not give weight to what Applicant intended its mark to convey to consumers absent evidence of consumer perception (which we do not have here), we do not agree with the Examining Attorney’s characterization of the mark. We instead regard the interior portion of Applicant’s mark as an inseparable element of the overall mark, as discussed above.

Although the incorporation of the entirety of one mark in another often increases the similarity between the marks, *see, e.g., Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (finding CALIFORNIA CONCEPT and surfer design substantially similar to prior mark CONCEPT), we do not find that to be the case here. Rather, when we consider the marks in their entireties, we find that the differences between Applicant’s mark and Registrant’s mark are substantial, and certainly sufficient to distinguish them. *See In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 75-51 (Fed. Cir. 1985) (“The basic principle in determining confusion between marks is that the marks must be compared in their entireties.... It follows from that principle that likelihood of confusion cannot be predicated on dissection of

a mark, that is, on only part of a mark.”); *see also Jack Wolfskin*, 116 USPQ2d at 1134-35.

“No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). On this record, and given the various interpretations of Applicant’s mark, including those set out above, we find Applicant’s mark and Registrant’s mark so different that even when they are used on identical goods and closely related goods and services, we think confusion is unlikely.

The *DuPont* factor of the similarity or dissimilarity of the marks therefore weighs heavily against likelihood of confusion.

## II. Conclusion

Having considered all the evidence and arguments bearing on the relevant *DuPont* factors, we find confusion is not likely due to the substantial and significant differences between the marks. *See Odom’s Tenn. Pride Sausage*, 93 USPQ2d at 2032; *Keebler*, 9 USPQ2d at 1739.



**Decision:** The refusal to register Applicant’s mark  under Section 2(d) is reversed in all Classes.

Coggins, Administrative Trademark Judge, dissenting:

I respectfully dissent from the majority's findings regarding the first *DuPont* factor (i.e., the similarity or dissimilarity of the marks in their entirety) and that factor's effect on the conclusion of likelihood of confusion.

The outer portion of Applicant's mark is comprised of a simple fret. It is a common decorative border constructed from a continuous, thin line contained within a thinner, simple circle. As such, it acts as a carrier for the central, larger, bolder, and more dominant portion of the mark – the flipped mirror image chevrons which are strikingly similar to and comprise the whole of Registrant's mark. The relatively larger areas of white space within the center of Applicant's simple motif are set off by the wider, bolder, semi-circular lines abutting the chevrons and contrast with the similarly wide, bold lines of the chevrons themselves. The contrast immediately draws the eye to the center of the mark and holds it there, emphasizing the chevrons (which, again, are highly similar to and form the entirety of the cited mark).

Registrant's mark and the central, dominant feature of Applicant's mark are both presented in sans serif, making the marks more similar. Whether viewed as flipped mirror image chevrons, flipped mirror image Vs, or a stylized VA, these similar elements leave the same impression upon a consumer.

I agree with the majority's findings regarding the second, third, fourth, and sixth *DuPont* factors. Because it has not been demonstrated that the cited mark is weak, I would find that when the overall similarity of the marks in their entirety is weighed along with the in-part identity of the goods, and otherwise close relationship between



the goods and services, which travel in the same trade channels to the same buyers who may purchase the goods on impulse, there is a likelihood of confusion.

In my view, the first *DuPont* factor also weighs in favor of a likelihood of confusion, and I would therefore affirm the refusal under Section 2(d) as it pertains to each International Class.