

This Opinion is Not a
Precedent of the TTAB

Mailed: September 3, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Brockway Ferry Corp DBA Leather Man Ltd.
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Serial No. 90127025
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Richard D. Getz of Getz Balich LLC,
for Brockway Ferry Corp DBA Leather Man Ltd.

Catherine Caycedo, Trademark Examining Attorney, Law Office 101,
Zachary Sparer, Managing Attorney.

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Before Lykos, Goodman and Thurmon,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Brockway Ferry Corp DBA Leather Man Ltd. (“Applicant”) seeks to register on
the Principal Register the composite mark displayed below



for goods identified as “Belts; Belts for clothing; Belts made of leather; Belts made out of cloth; Belts of textile; Fabric belts; Leather belts; Waist belts” in International Class 25.¹ Applicant has disclaimed LEATHER, LTD and ESSEX, CT apart from the mark as shown. The description of the mark is as follows:

The mark consists of an outline of an oval within an outline of another oval. Between the two ovals is the wording ‘LEATHER MAN LTD’ and ‘ESSEX, CT’ with two stars between the words. Within the smaller oval is a picture of a schooner sailboat with sails.

Applicant stated in response to an information request from the Examining Attorney asking whether Applicant’s belts are made of leather:²

We do make some belts entirely out of leather. ... That is a very small part of our business as most of our belts are primarily made out of cotton web or other material with the tab end only being out of leather. We also make a d-ring style of belt that does not use leather at all.

This prompted the Examining Attorney to issue a partial refusal of Applicant’s mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), as deceptive in connection with the following goods not comprised of leather: Belts; Belts for clothing; Belts made out of cloth; Belts of textile; Fabric belts; Waist belts.

¹ Application Serial No. 90127025, filed August 20, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging June 1, 1967 as the date of first use anywhere and August 1, 1983 as the date of first use in commerce.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. Citations to the record throughout the decision include references to TTABVue, the Board’s online docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

² April 15, 2021 Response to Office Action at TSDR 12.

Registration was also 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 registered composite mark displayed below (with "Leather" disclaimed),



for "Clothing made in whole or part of leather, namely, coats, jackets, belts, shoes, skirts, and ties" in International Class 25, that it is likely to cause confusion or mistake or to deceive.³ The description of the drawing is as follows: "The mark consists in part of a man making leather from a rawhide."

Applicant timely filed a notice of appeal, and both refusals are briefed. For the reasons explained below, we reverse both refusals.

I. Deceptiveness Refusal under Trademark Act Section 2(a)

Trademark Act Section 2(a) bars registration of a mark that "consists of or comprises ... deceptive ... matter." 15 U.S.C. § 1052(a); *see also In re Budge Mfg. Co.*, 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988). A deceptive mark cannot be registered on the Principal or Supplemental Register, and neither acquired distinctiveness nor a disclaimer of the deceptive matter renders it registrable. 15 U.S.C. § 1052(a); *see also Budge*, 8 USPQ2d at 1262 ("it is too well established for argument that a mark which includes deceptive matter is barred from registration

³ Registration No. 2474800, registered August 7, 2001 on the Principal Register; renewed.

and cannot acquire distinctiveness.”); *R. Neumann & Co. v. Overseas Shipments, Inc.*, 326 F.2d 786, 140 USPQ 276, 278-79 (CCPA 1964); *In re White Jasmine LLC*, 106 USPQ2d 1385, 1391 (TTAB 2013); *In re E5 LLC*, 103 USPQ2d 1578, 1584 (TTAB 2012).

The test for determining whether a mark is deceptive under Section 2(a) sets forth three requirements:

- (1) Does the mark consist of or comprise a term that misdescribes the character, quality, function, composition, or use of the goods?
- (2) Are prospective purchasers likely to believe that the misdescription actually describes the goods? and
- (3) Is the misdescription likely to affect the purchasing decision of a significant or substantial portion of relevant consumers?

Budge, 8 USPQ2d at 1260; *see also In re Spirits Int’l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1493, 1495 (Fed. Cir. 2009); *In re Tapco Int’l Corp.*, 122 USPQ2d 1369, 1371 (TTAB 2017).

A mark may be found deceptive on the basis of a single deceptive term that is embedded in a composite mark. *White Jasmine*, 106 USPQ2d at 1391. That being said, “[m]isdescriptiveness of a term may be negated by its meaning in the context of the whole mark inasmuch as the combination is seen together and makes a unitary impression.” *Budge*, 8 USPQ2d at 1261; *see also, In re Simmons, Inc.*, 192 USPQ 331, 333 (TTAB 1976) (WHITE SABLE for “brushes used for artistic painting” held not deceptive because the “characteristic color of sable fur is black” and thus white sable

must come from a fictitious animal that cannot deceptively represent brush hair from a real animal).

The Examining Attorney's refusal hinges on the inclusion of the single word "Leather" in Applicant's mark. Although "Leather" might be misdescriptive of the items in Applicant's identification not made of leather, we must consider the meaning of the term in the context of the mark as a whole. *A. F. Gallun & Sons Corp. v. Aristocrat Leather Prods., Inc.*, 135 USPQ 459, 460 (TTAB 1962) (holding COPY CALF, for wallets and billfolds of synthetic and plastic material made to simulate leather, not deceptive, noting that the mark, as an obvious play on the expression "copy cat," suggested to purchasers that the goods were imitations of items made of calf skin); *see also In re Sharky's Drygoods Co.*, 23 USPQ2d 1061, 1062 (TTAB 1992) (reversing refusal under Section 2(a) to register PARIS BEACH CLUB because in context, PARIS is part of an incongruous and humorous phrase, and would not be understood as the geographic origin of the goods). Even in a Section 2(a) refusal that narrows the focus on the allegedly deceptive matter, the refusal cannot not be based on taking the term out of context when doing so would change its significance in the mark.

The origin story of Applicant's mark was inspired by the legend of the "old Leather [M]an, ... a vagabond [who] was famous for the leather suit of clothes he wore."⁴ According to folklore, he "traveled a circuit between the Connecticut and Hudson

⁴ April 15, 2021 Response to Office Action at TSDR 11.

River.”⁵ He became well-known in the villages in Connecticut and neighboring towns of Essex where he would have food and necessities ready for him upon his arrival.⁶ Applicant chose this trademark in 1967 as “clever play” and tribute to the Leather Man.⁷

When we consider the mark as a whole, the term “Leather” does not take on its ordinary meaning, but rather is used to evoke the imagery of the legend of the Leather Man indigenous to the Essex region of Connecticut. In other words, the “[m]isdescriptiveness of [the word leather] [is] negated by its meaning in the context of the whole mark” because the combination of “Leather Man,” along with the geographic location of “Essex, CT” and a sailing motif creates an entirely different “unitary impression.” *Budge*, 8 USPQ2d at 1261 (citing *A.F. Gallun & Sons*, 135 USPQ at 460). The Examining Attorney has improperly taken the word “Leather” out of context of the entire mark. The mark conveys the impression of a person, not a product component, by combining the words “Leather” and “Man.” We therefore find that “Leather” in Applicant’s composite mark is not deceptively misdescriptive, and the applied-for mark, taken as a whole, is not deceptive under Section 2(a). The refusal to register Applicant’s mark is under Section 2(a) is therefore reversed.

II. Likelihood of Confusion under Trademark Act Section 2(d)

Section 2(d) of the Trademark Act prohibits the registration of a mark that:

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

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. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In making our determination, the Board has considered each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil*, 26 USPQ2d at 1688 (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). “Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). 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.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see also 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.”). These factors, and the others, are discussed below.

A. The Goods and The Established, Likely-to-Continue Channels of Trade and Classes of Consumers

We commence with the second *DuPont* factor and compare the goods as identified in the application and cited registration. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018); *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also B & B Hardware*, 113 USPQ2d at 2049 (recognizing that an “applicant’s right to register must be made on the basis of the goods described in the application”). Both the application and cited registration include leather belts meaning that the goods are in-part identical. The second *DuPont* factor therefore strongly favors a likelihood of confusion.

This brings us to the third *DuPont* factor, the established, likely-to-continue channels of trade and classes of consumers. *See Detroit Athletic Co.*, 128 USPQ2d at

1051 (citing *DuPont*, 177 USPQ at 567). As with the second *DuPont* factor, we look to the language of the identification of goods. See *B & B Hardware*, 113 USPQ2d at 2049 (explaining that “if an application does not delimit any specific trade channels of distribution, no limitation will be applied”) (cleaned up). Because the goods are in-part identical and unrestricted as to trade channels and consumers classes, we must presume that these identical goods travel in the same ordinary trade and distribution channels and will be marketed to the same potential 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); *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); *Am. Lebanese Syrian Assoc’d Charities Inc. v. Child Health Rsch. Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011). The third *DuPont* factor also weighs in favor of finding a likelihood of confusion.

B. The Marks

Keeping in mind that where the goods are in-part identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines, *Bridgestone Americas Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012), we now consider the first *DuPont* factor which involves an analysis of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. See

Palm Bay, 73 USPQ2d at 1693 (citing *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)). The proper test regarding similarity “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.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks and citation omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Bay State Brewing Co., Inc.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (citing *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)); *see also In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009).

Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *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 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.”). “No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.” *In re Electrolyte Labs. Inc.*, 913 F.2d 930, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (CCPA 1974)). 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 entireties. *Stone Lion*, 110 USPQ2d at 1161.



In this case we are comparing the composite marks and



, marks comprised of both wording and design elements. “The comparison of composite marks must be done on a case-by-case basis, without reliance on mechanical rules of construction.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1207.01(c)(ii) (May 2024). *See, e.g., Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-36 (Fed. Cir. 2015) (holding that Board’s finding of similarity

lacked substantial evidence because it minimized the literal element in a composite mark); *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (CCPA 1974) (reversing Board's holding that SPICE TREE with tree design, for garlic powder and minced onion, and SPICE ISLANDS with and without tree design, for seasoning herbs and spices, is not likely to cause confusion). As with word marks, “[a]lthough it is not proper to dissect a mark, if one feature of a mark is more significant than another feature, greater weight may be given to the dominant feature for purposes of determining likelihood of confusion.” TMEP § 1207.01(c)(ii) (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) and *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ 390, 395 (Fed. Cir. 1983)). In assessing what constitutes the dominant portion of a composite mark, greater weight is often given to the wording, because it is the wording that purchasers would use to refer to or request the goods. *Viterra*, 101 USPQ2d at 1911; *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010); *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Nonetheless, composite marks, as with any marks, must be considered in their entireties. *See Jack Wolfskin*, 116 USPQ2d at 1134; *In re Shell Oil Co.*, 26 USPQ2d at 1688; *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974).

The Examining Attorney argues that the dominant feature of each mark is the wording “Leather Man,” and that this feature renders the marks similar in appearance, sound, connotation and commercial impression. The Examining Attorney points to the disclaimed wording in Applicant's mark “Ltd.,” and “Essex,

CT” as subordinate wording. She also finds, without providing an explanation, that that the design elements in each mark make less of an impact than the wording “Leather Man.”

The Examining Attorney has improperly dissected Applicant’s composite mark without considering the effect of the additional wording “Essex, CT” and sailboat design. While Applicant’s and Registrant’s marks do share the phrase “Leather Man” making them aurally similar, the distinctions in connotation and commercial impression are significant. Consumers are likely to perceive Applicant’s mark as a reference to the legend of the Leather Man consumers sailing the waters of the Connecticut and Hudson Rivers in Essex region. This additional wording, coupled with the sailboat motif, alters the commercial impression. We therefore reject the Examining Attorney’s finding that “Leather Man” is the dominant element in Applicant’s composite mark. Instead, no single word dominates because Applicant’s mark as a whole is unitary. *Cf. Ex parte Mooresville Mills, Inc.*, 102 USPQ 440, 441 (Comm’r Pats. 1954) (a unitary phrase has “some degree of ingenuity in its phraseology as used in connection with the goods; or [say] something a little different from what might be expected to be said about the product; or [say] an expected thing in an unexpected way.”). The primary connotation and commercial impression of Applicant’s composite mark calls to mind the legend of the Leather Man in the neighboring towns of Essex, Connecticut.

By contrast, the cited mark is entirely devoid of any hint or reference to this folklore legend. Without the geographic location of “Essex, CT” and the sailboat

design, the phrase “Leather Man” in the cited composite mark takes on the meaning of the man depicted in the design element of Registrant’s mark creating leather products out of rawhide. When confronted with Applicant’s and Registrant’s marks, prospective consumers will glean different meanings.

We find that the Applicant’s and Registrant’s marks are different in connotation and commercial impression when considered in their entireties. *See Jack Wolfskin*, 116 USPQ2d at 1134. The first *DuPont* factor weighs against a finding of likelihood of confusion.

C. Actual Confusion and Contemporaneous Use

Lastly, we address the seventh *DuPont* factor, the “nature and extent of any actual confusion,” and the related eighth *DuPont* factor, “length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 177 USPQ at 567. Applicant argues that it and Registrant have been using their respective marks for over 30 years without any reports of actual confusion from consumers.

“The length of time during and conditions under which there has been concurrent use without evidence of actual confusion, requires us to look at actual market conditions, to the extent there is evidence of such conditions of record.” *In re Guild Mtg. Co.*, 2020 USPQ2d 10279, at *6 (TTAB 2020). *See also In re Calgon Corp.*, 435 F.2d 596, 168 USPQ 278, 280 (CCPA 1971). Other than Applicant’s mere assertions, the record is devoid of any such evidence or specifics regarding the geographic extent or overlap of the Applicant’s and Registrant’s goods. *Guild Mtg.*, 2020 USPQ2d 10279,

at *7. “The fact that an applicant in an ex parte appeal is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred.” *In re Opus One, Inc.*, 60 USPQ2d 1812, 1817 (TTAB 2001). There has been “no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion. We therefore are getting only half the story.” *Guild Mtg.*, 2020 USPQ2d 10279, at *7.

“The relevant test is likelihood of confusion, not actual confusion.” *Detroit Athletic Co.*, 128 USPQ2d at 1053. “[A] showing of actual confusion is not necessary to establish a likelihood of confusion.” *Herbko*, 64 USPQ2d at 1380. We therefore deem the seventh and eighth *DuPont* factors neutral.

D. Weighing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument; “explain the results of that weighing;” and “the weight [we] assigned to the relevant factors.” *In re Charger Ventures LLC*, 65 F.4th 1375, 2023 USPQ2d 451, at *7 (Fed. Cir. 2023). “No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.” *Mighty Leaf Tea*, 94 USPQ2d at 1260; *see also Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 2024 USPQ2d 293, at

*2 (Fed. Cir. 2024). We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto.

The goods are in-part identical, meaning that the second *DuPont* factor strongly favors a likelihood of confusion. Because the goods are in-part identical and unrestricted as to trade channels and consumers classes, we can rely on the presumption that these identical goods travel in the same ordinary trade and distribution channels and will be marketed to the same potential consumers. As a result, the third *DuPont* factor also favors a likelihood of confusion. The first *DuPont* factor, however, weighs against finding a likelihood of confusion due to the differences in the marks in connotation and commercial impression. This is the case even though the goods are in-part identical. *See Bridgestone*, 102 USPQ2d at 1064 (where the goods are in-part identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines). The seventh and eighth *DuPont* factors are neutral.⁸

Any of the *DuPont* factors may play a dominant role. *DuPont*, 177 USPQ at 567. In some cases, a single factor may be dispositive. *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991). We find that the dissimilarity of the marks in meaning and commercial impression is so great as to outweigh the

⁸ Applicant argues that “[t]he fact that the term LEATHER appears in 2,933 entries in TESS also suggests that the term is appropriately given less weight.” Supplemental Brief, p. 10; 12 TTABVUE 12. Applicant’s argument implicates the sixth *DuPont* factor. We deem this factor neutral because Applicant did not properly make of record this evidence challenging the conceptual weakness of the cited mark.

second and third *DuPont* factors. We therefore conclude that confusion is unlikely.

The Trademark Examining Attorney's Section 2(d) refusal is reversed.

Decision: The Section 2(a) and Section 2(d) refusals are reversed.