

This Opinion is Not a
Precedent of the TTAB

Mailed: March 31, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Bulletproof Property Management, LLC
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Serial No. 90545574
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Bennet K. Langlotz of Langlotz Patent and Trademark Works, LLC,
for Bulletproof Property Management, LLC.

Alexandra Liebl, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

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Before Rogers, Chief Administrative Trademark Judge,
Taylor and Hudis, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Bulletproof Property Management, LLC (“Applicant”) seeks registration on the Principal Register of the mark SERGEANT (in standard characters) for the following goods, as amended: “Ammunition; Firearms; Holsters; Component parts for guns,” in International Class 13.¹

¹ Application Serial No. 90545574 was filed on February 24, 2021, and alleges a bona fide intention to use the goods in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). As to the recited goods, Applicant indicated in its brief that when filing its Request for Reconsideration, it stated it would be willing to amend the description of goods by deleting “Gun and rifle cases.” Applicant further stated that the Examining Attorney denied the reconsideration request without considering the amendment. Although Applicant’s proposed

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that there is a likelihood of confusion with the mark in U.S. Registration No. 3326154, SERGEANT, for "All purpose sporting bags, backpacks [and] duffel bags, all for use in the fields of hunting, fishing, camping and outdoor gear," in International Class 18.²

When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration and the appeal resumed. Both Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

I. Applicable Law

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177

amendment was not specifically addressed in the Examining Attorney's denial on reconsideration, the amendment obviously was accepted because the Office records so reflect. The goods were listed in the Examining Attorney's denial and in her brief as "Ammunition; Firearms; Holsters; Component parts for guns," reflecting deletion of "Gun and rifle cases." We note that when a proposed amendment is acceptable to the Examining Attorney, the next Office Action should so state, leaving no room for doubt going forward or in the case of an appeal.

² Registration No. 3326154 issued on October 30, 2007 and was renewed. The registration includes additional goods in Class 25 that were not cited as a bar to registration.

USPQ 563, 567 (CCPA 1973) (“*DuPont*”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). We discuss below these and the other relevant *DuPont* factors 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).

II. The Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entirety, considering their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. Because Applicant’s standard character SERGEANT mark and Registrant’s standard character SERGEANT mark are identical, both are likely to engender the same connotation and overall commercial impression when considered in connection with Applicant’s and Registrant’s respective goods. *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017).

Accordingly, the similarity between the marks factor weighs strongly in favor of a finding of likelihood of confusion.

III. Relatedness of the Goods, Channels of Trade and Classes of Consumers

We next compare the goods as they are identified in the involved application and cited registration, the second *DuPont* factor. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Stone Lion Capital Partners, LP v.*

Lion Capital 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).

The greater the degree of similarity between the marks, the lesser the degree of similarity between the goods that is necessary to support a finding of likelihood of confusion. *Bd. of Regents v. S. Ill. Miners, LLC*, 110 USPQ2d 1182, 1189 (TTAB 2014); *see also Orange Bang, Inc. v. Ole Mexican Foods, Inc.*, 116 USPQ2d 1102, 1117 (TTAB 2015); *In re Opus One, Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). In addition, the goods of the parties need not be similar or competitive, or even offered through the same channels of trade, to support a finding of likelihood of confusion. “It is sufficient that the goods or services of the parties are related in some manner, or that the conditions and activities surrounding the marketing of the goods or services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source.” *Bd. of Regents*, 110 USPQ2d at 1189; *see also Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012).

Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant services are used together or used by the same purchasers; advertisements showing that the relevant services 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 services and the services listed in the cited registration. *See, e.g., Detroit Athletic* 128 USPQ2d at 1051 (relatedness

supported by evidence that third parties sell both types of goods under same mark, showing that “consumers are accustomed to seeing a single mark associated with a source that sells both.”); *In re Embiid*, 2021 USPQ2d 577, at *22-23 (TTAB 2021) (citing *In re Ox Paperboard*, 2020 USPQ2d 10878, at *5 (TTAB 2020); *Hewlett-Packard v. Packard Press*, 62 USPQ2d at 1004 (Fed. Cir. 2002); *In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012) (Internet excerpts from “several third-party car dealerships offering ‘tires’ for sale on their websites” was “evidence that consumers expect to find both ‘tires,’ . . . and ‘automobiles’ . . . emanating from a common source.”).

Because Applicant’s mark SERGEANT is identical to Registrant’s cited mark SERGEANT, all that is required is a “viable relationship” between Applicant’s ammunition, firearms, holsters and component parts for guns and Registrant’s all-purpose sporting bags, backpacks, and duffel bags, all for use in the fields of hunting, fishing, camping and outdoor gear. *See, e.g., In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Opus One*, 60 USPQ2d at 1815 (“Where the applicant’s mark is identical to the registrant’s mark, as it is in this case, there need only be a viable relationship between the respective goods or services in order to find that a likelihood of confusion exists”). The issue is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source thereof. *In re Rexel, Inc.*, 223 USPQ 830 (TTAB 1984); *see also J. C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 52 C.C.P.A. 981, 144 USPQ 435, 438 (CCPA

1965) (“The confusion involved, of course, is not a confusion of goods but a confusion of business”).

Further, the Trademark Examining Attorney need not prove similarity or relatedness as to each and every product listed in the description of goods. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *i.am.symbolic*, 116 USPQ2d at 1409; *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

The Examining Attorney argues that the goods are related because “entities who provide firearms often provide sporting bags, and market these goods all under the same mark.”³ As support, the Examining Attorney submitted screen captures from the websites of third-parties showing both firearms and bags being sold together under the same mark. Examples include:

- The webpages from RUGER show both firearms and sporting bags under the Ruger mark. September 18, 2021 Office Action; TSDR 8-9.
- The webpages from SMITH & WESSON show both firearms and backpacks under the Smith & Wesson mark. September 18, 2021 Office Action; TSDR 10-12.
- The webpages from HECKLER & KOCH show both firearms and sporting bags under the HK mark. September 18, 2021 Office Action; TSDR 13-15-10.
- The webpages from MOSSBERG show both firearms and sporting bags under the Mossberg mark. March 29, 2022 Final Office Action; TSDR 6-7. We note that the bags are in the nature of gun cases.






³ 8 TTABVUE 4.

- The website of SIG SAUER shows both firearms and range bags under the Sig Sauer mark. March 29, 2022, Final Office Action; TSDR 8-9.
- The website of BENELLI shows both firearms and sporting bags and backpacks under the Benelli mark. March 29, 2022 Final Office Action; TSDR 10-14.
- The website of SAVAGE shows both firearms and range bags under the Savage mark; March 29, 2022 Final Office Action, TSDR pp. 17-19.
- The website of BROWNING shows both firearms and bags under the Browning mark. November 9, 2022 Request for Reconsideration, TSDR pp. 4-6, 9-12.
- The website of GLOCK shows both firearms and bags under the Glock mark. November 9, 2022, Request for Reconsideration, TSDR pp. 7-8.

In addition to providing screen shots from third-party websites, the Examining Attorney made of record copies of use-based, third-party registrations for marks covering goods of the types identified in both Applicant's application and the cited registration.⁴ Third-party registrations that individually cover different goods and that are based on use in commerce serve to suggest that the listed goods are of a type that may emanate from a single source. *See Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988) (Although third-party registrations are "not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may nonetheless have some probative value to the extent

⁴ March 29, 2022 Final Office Action; TSDR 20-64. We consider the bags, duffels bags and backpacks, unrestricted as to their uses or channels of trade in the registrations, to include those for use in the fields of hunting, fishing, camping and outdoor gear. We give no probative value to the third-party registrations made of record by the Examining Attorney that are not included in the table below, because they do not include goods of the types listed in both Applicant's application and the cited registration.

that they may serve to suggest that such goods or services are of a type which may emanate from a single source”). *See also Albert Trostel*, 29 USPQ2d at 1786. The third-party registrations include:

Registration No.	Mark	Relevant Goods ⁵
3190444	TASMANIAN TIGER	Tactical holsters, namely leg holsters and sport and leisure bags and backpacks
3702129		Holsters and duffel bags and backpacks
2994667	TACTICAL TAILOR	Holsters and backpacks specially designed to store military equipment
3206360	VEGA HOLSTER	Holsters and duffel bags and sports bags
4545609		Firearms and hunting bags and backpacks
5061332	IRIS	Firearms and backpacks, day packs and hiking bags for rugged outdoor use
5043369		Firearms and ammunition and hunting bags and backpacks
5052024		Holsters and backpacks
5483181	CLAWGEAR	Firearms and sports bags
5658404	AQUATERRO	Firearms and ammunition and all-purpose gear bags and backpacks
5790396	OUTRIDER TACTICAL	Firearms and sports bags and backpacks
5809094		Firearms and ammunition for firearms and sports bags

⁵ The registrations include additional goods and services that are not relevant to this appeal.

Applicant criticizes the Examining Attorney's third-party use evidence, arguing that the evidence merely demonstrates a single owner of multiple goods, which does not mean the goods are related. According to Applicant, the "cited examples are companies that are originally and primarily recognized as firearms companies which also apply their [highly recognized] firearms brand to bags and a host of other goods that are also unrelated to firearms...." Applicants brief, p. 6.⁶ We are not persuaded by this argument for multiple reasons. First, Applicant offered no evidence to support its claim that these referenced third parties are highly recognized or primarily recognized as purveyors of firearms. But even if they are, that these third parties offer additional goods under the same mark does not diminish the relatedness of firearms and sport bags, which are offered on the same website under the same mark. Rather, the evidence enhances the relatedness of the goods for consumers, who will be accustomed to these goods having a single source. The evidence shows the types of goods of both Applicant and the owner of the cited registration routinely have a common source, and is not merely evidence of retail stores offering a variety of branded goods, as Applicant suggests.

⁶ 6 TTABVUE 7. In an attempt to support this argument, Applicant included hyperlinks presumably to product pages on the Ruger, Smith & Wesson, and Heckler & Koch websites, and not the pages themselves. Applicant's March 17, 2022 Response; TSDR 5-7. We remind Applicant that hyperlinks do not make the information displayed at such links of record. See *TV Azteca, S.A.B. de C.V. v. Martin*, 128 USPQ2d 1786, 1790 n.14 (TTAB 2018) (providing an Internet link to an article is insufficient to make the article of record because the information displayed at a link's Internet address is impermanent; article is of record only because it was submitted as an exhibit to a declaration. "The Board does not accept Internet links as a substitute for submission of a copy of the resulting page."); *In re HSB Solomon Assocs., LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) (stating that "a reference to a website's internet address is not sufficient to make the content of that website or any pages from that website of record"). Accordingly, Applicant's argument is accorded limited probative value.

Moreover, contrary to Applicant's contention, the third-party use evidence is not the only evidence supporting the relatedness of the goods. Although not evidencing the public's familiarity with the marks, the third-party registration evidence shows that third-party entities, some potentially lesser known or with a more modest range of goods, register goods of the types in Applicant's application and the cited registration under a single mark, and thus both firearms, holsters and ammunition on the one hand, and on the other hand bags, including sport bags, may emanate from a single source.

Similarly, we are unpersuaded by Applicant's argument that to find the goods related "would radically broaden the scope of trademarks and give the Registrant undue power to determine that any products, no matter how remote (t-shirts?), is now related to, say, firearms or bags." Applicant's brief, p. 9.⁷ As noted, we compare the goods based on the respective identifications. *Detroit Athletic*, 128 USPQ2d at 1052. The record evidence shows that Registrant's all-purpose sports bags also are complementary to Applicant's firearms and ammunition in that they may be used for ammunition storage or to transport a gun during a hunting trip, and complementary goods have routinely been found by this Board and its primary reviewing court to be related goods.

Applicant also argues that the respective goods are not likely to be confused because it and Registrant sell separate goods without any crossover. For goods to be related, it is not necessary that Applicant and Registrant be direct competitors;

⁷ 8 TTABVUE 10.

rather, they need only be producing goods that are related from the point of view of consumers of the respective goods. It is sufficient that separately marketed goods could be encountered by the same consumer under situations that would lead to the mistaken belief that they originate from the same source. *Coach Servs.*, 101 USPQ2d at 1723.

Here, we find the Examining Attorney's third-party use and registration evidence sufficient to show that Applicant's identified goods are related and complementary to Registrant's identified goods, because such goods are often sold by the same third-party source under the same mark. As Applicant acknowledges, "bags and firearms may sometimes be used by the same consumers." Finally, contrary to Applicant's contention that the goods would not be used simultaneously, they may be used at the same time, for example, during a hunting trip.

The *DuPont* factor of the relatedness of the goods thus favors a finding of likelihood of confusion.

IV. Relatedness of the Trade Channels/Classes of Consumers

Because there are no limitations as to channels of trade or classes of purchasers in Applicant's or Registrant's identifications of goods, we must presume that Applicant's and Registrant's goods move, or will move, in all channels of trade usual for these goods, including, as the record shows, online and brick and mortar sporting goods shops and are, or will be, purchased by the usual classes of purchasers which, in this case, include ordinary consumers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716

(TTAB 1992). *Cf., In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011) (“The next *du Pont* factor we consider is the channels of trade. ... [A]pplicant’s own website, pages of which were made of record by the examining attorney ..., shows that applicant offers, as categories of products, both wine and beer. This *du Pont* factor favors a finding of likelihood of confusion.”).

We accordingly find that the channels of trade and classes of consumers, at a minimum, overlap.

The third *DuPont* factor weighs in favor of a finding of likelihood of confusion.

V. Sophistication of the Purchasers

Applicant contends that “the high expectations and costs associated with firearms and other high-performance products are substantial and purchased only after careful deliberation by highly sophisticated and professional buyers seeking high-performance.” Applicant’s br. p. 8.⁸ Applicant further argues that given the complexity of the firearms purchase process due to federal regulations associated with their purchase, it requires consumers to be more sophisticated. *Id.* While the record shows the cost of some firearms exceeds \$2,000. Applicant’s identification of goods must be read to include even the lowest priced firearms; and there is no supporting evidence as to the specific federal requirements for the purchase of firearms. Even if Applicant’s purported requirements for the purchase of a firearm, such as age, mental capacity, background checks, fingerprinting, and waiting periods were established by the record – and they are not – we have no basis on which to

⁸ 8 TTABVUE 9.

conclude they have any effect on the degree of care exercised by consumers in their selection of a particular firearm.

Even if we were to assume that purchasers of Applicant's firearms exercised some degree of care in their buying decisions, even knowledgeable and careful purchasers can be confused as to source, especially where, as here, identical marks are used in connection with complementary and related goods. *See In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) (citing *Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers ... are not infallible.")). *See also Refreshment Mach. Inc. v. Reed Indus., Inc.*, 196 USPQ 840, 843 (TTAB 1977) (selling to a sophisticated purchaser does not automatically eliminate the likelihood of confusion because "[i]t must also be shown how the purchasers react to trademarks, how observant and discriminating they are in practice, or that the decision to purchase involves such careful consideration over a long period of time that even subtle differences are likely to result in recognition that different marks are involved").

We find that the *DuPont* factor regarding purchaser sophistication to be neutral.

VI. Conclusion

We conclude that confusion is likely between Applicant's SERGEANT mark for "Ammunition; Firearms; Holsters; [and] Component parts for guns and the cited SERGEANT mark for "all purpose sporting bags, backpacks [and] duffel bags, all for use in the fields of hunting, fishing, camping and outdoor gear." We so conclude due

to the identical marks, the related and complementary nature of the goods, and the presumed overlap in trade channels and purchasers.

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