

This Opinion is Not a
Precedent of the TTAB

Mailed: December 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Brumis Imports, Inc.
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Serial No. 90605980
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Douglas A. Miro and Holly Pekowsky of Amster, Rothstein & Ebenstein LLP
for Brumis Imports, Inc.

Won Oh, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.
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Before Pologeorgis, English and Lebow,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Brumis Imports, Inc. (“Applicant”) seeks registration on the Principal Register of the standard-character mark BKLYN REFINERY (BKLYN disclaimed) for the following goods in International Class 3:

non-medicated hand soap, hand lotion, body wash in the nature of a shower gel, body lotion, body butter, body scrub, foot scrub, non-medicated foot lotion, non-medicated bath salts in the form of crystals, bath crystals, bath oil, body oil, essential oils blends, bath fizzer, namely bath bomb, shower fizzer, namely shower bomb, non-medicated skin care preparation, namely body mist, hand scrub, face wash, wash lotion/cream, namely non-medicated skin care lotion and creams, face mask in the nature of beauty masks for face, sheet face mask in the nature of beauty masks for face, non-medicated face serum, facial oil,

non-medicated skincare preparations in the nature of face mist, non-medicated under eye mask for cosmetic purposes, hand mask for skin care, foot mask for skin care, non-medicated skincare preparations in the nature of pore strips, hair shampoo, hair conditioner, hair mask, non-medicated liquid dish soap, scented room spray, body glitter, nail polish, lip balm, lip gloss, lipstick, lip scrub, eyeshadow, nail decals, pumice stones for personal use, non-medicated beard care preparations, namely, beard oil, beard wax and beard wash; all purpose [sic] cleaners.¹

The Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark THE REFINERY registered on the Principal Register for the following goods in International Class 3:

toilet preparations, namely, bath additives, namely, bath gels, bath oils and nonmedicated bath salts; shower gels; shampoos; shaving preparations; after shave preparations; massage oils, massage creams; essential oils for personal use; non medicated skin and body care preparations, namely, cleansers and washes for the face and body, shaving oils, gels and foams, moisturizing oils, lotions, non-medicated balms and non-medicated serums for the face and skin; cosmetic preparations for body care, skin care preparations, namely, body polish; skin lotions, skin creams, skin toners; skin moisturizers; skin cleansers; beauty masks, beauty facial packs, namely, facial masks, facial scrubs; gift packages comprising cosmetics and skin care products, namely, cosmetics, non-medicated skin care preparations.²

When the refusal was made final, Applicant appealed. Applicant and the Examining Attorney filed appeal briefs and Applicant filed a reply brief.

We affirm the refusal to register under Section 2(d) of the Trademark Act.

¹ Application Serial No. 90605980 (the "Application") was filed on March 26, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark. The application also covers goods in International Class 25, but those goods are not subject to the refusal or involved in this appeal.

² Registration No. 3933355 (the "Cited Mark" or "Cited Registration") was issued on March 22, 2011 and has been renewed.

I. Analysis

“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 [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Charger Ventures*, 64 F.4th at 1381.

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, Opp. No. 91194974, 2015 WL 1646447, at *8 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). “The weight given to each factor depends on the circumstances of each case.” *In re Charger Ventures*, 64 F.4th at 1381; *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). Moreover, “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, 1199 (CCPA 1973).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods or services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002)). We address these two factors and other relevant *DuPont* factors below.

A. Similarity or Dissimilarity of the Goods, Trade Channels and Consumers

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” and under the third *DuPont* factor we consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361. We must base our comparisons under the second and third *DuPont* factors on the goods identified in the Cited Registration and the Application. *See, e.g., In re Charger Ventures*, 64 F.4th at 1383 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration.”) (emphasis omitted); *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 WL 6072822, at *8 (TTAB 2021) (“[A]s with the relatedness of the goods, the similarity or

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dissimilarity of the channels of trade must be determined based on the identifications of goods in the parties' registrations[.]”).

It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of goods in a particular class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 WL 4269973, at *4 n.5 (TTAB 2015).

The Cited Registration and Application cover the following identical and legally identical goods:

Cited Registration	Involved Application
Shower gel	Shower gel
Skin lotion	Hand lotion, body lotion, non-medicated foot lotion; non-medicated skin care lotions and creams
Non-medicated bath salts	Non-medicated bath salts in the form of crystals
Bath oils	Bath oil
Essential oils for personal use	Essential oils blends
Washes for the face	Face wash
Beauty masks, beauty facial packs, namely, facial masks	Face mask in the nature of beauty masks for face, sheet face mask in the nature of beauty masks for face
Shampoos	Hair shampoo

Because there are no trade channel restrictions in the Cited Registration or Application, we must presume that the foregoing identical and legally identical goods travel through the same channels of trade to the same purchasers. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (“With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and ‘presume[d] that the identical goods move in the

same channels of trade and are available to the same classes of customers for such goods....”); *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers).

Applicant does not address relatedness of the goods, channels of trade, or classes of customers in its brief, apparently conceding these points. *See In re Morinaga Nyugyo Kabushiki Kaisha*, Ser. No. 86338392, 2016 WL 5219811, at *2 (TTAB 2016) (viewing applicant’s failure to address the second and third *DuPont* factors in its appeal brief as an apparent concession on those factors).

B. Strength of the Cited Mark

We turn next to the sixth *DuPont* factor under which we consider the conceptual and commercial strength of the Cited Mark. *See, e.g., Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (noting the “two prongs of analysis for a mark’s strength under the sixth factor”); *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”).

Applicant argues that the word REFINERY is conceptually and commercially weak for Registrant’s goods and entitled to a narrow scope of protection because: (1) it means “a building and equipment for refining or processing something (such as oil or sugar),” and thus, “is highly suggestive of cosmetics and other Class 3 personal care items” that are “refined”;³ (2) it “is laudatory for cosmetics since it implies that

³ Appeal Brief, 4 TTABVUE 5 (internal citations omitted) (citing definition of REFINERY from the MERRIAM-WEBSTER online dictionary attached to Applicant’s October 11, 2022 Response to Suspension Inquiry, TSDR 18).

cosmetics sold under the mark will be refined, i.e., elegant”;⁴ and (3) there are “several third party [sic] Registrations for ‘refinery’ formative marks for cosmetics and other Class 3 personal care items and clothing” showing that REFINERY is “so commonly used that the public will look to other elements to distinguish the source of the goods[.]”⁵

We address first the conceptual strength of the Cited Mark. The Cited Mark is not REFINER, a verb meaning “to free (something, such as metal, sugar, or oil) from impurities or unwanted material,”⁶ or “REFINED,” meaning “made free from other matter, or from impurities; purified; ... free from crudeness or coarseness; cultivated; elegant.”⁷ Rather, the Cited Mark THE REFINERY is a noun referring “to a building and equipment for refining or processing something[.]”⁸ Consumers encountering the Cited Mark must reason through what occurs at a refinery using refinery equipment before concluding that Registrant’s personal care preparations may be refined of impurities. We find the Cited Mark suggestive, but not highly suggestive or laudatory.

⁴ Reply Brief, 7 TTABVUE 4. Applicant cites to the COLLINS DICTIONARY definition of “refined” at www.collinsdictionary.com/us/dictionary/english/refined (last visited December 16, 2024). Applicant did not introduce a copy of this definition, but we exercise our discretion to take judicial notice that the COLLINS DICTIONARY defines “refined” as “1. made free from other matter, or from impurities; purified[; and] 2. free from crudeness or coarseness; cultivated; elegant[.]” See, e.g., *Conopco, Inc. v. Transom Symphony OPCO, LLC*, Opp. No. 91256368, 2022 WL 874335, at *7 n.8 (TTAB 2022).

⁵ Appeal Brief, 4 TTABVUE 5 (internal quotation marks omitted).

⁶ We take judicial notice of this definition from the MERRIAM-WEBSTER online dictionary at www.merriam-webster.com/dictionary/refine (last visited December 16, 2024).

⁷ See n.4 above.

⁸ Applicant’s October 11, 2022 Response to Suspension Inquiry, TSDR 18.

We further note that the Cited Mark is registered on the Principal Register without a disclaimer of the word REFINERY or a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), so we must presume that it is an inherently distinctive mark. Trademark Act Section 7(b), 15 U.S.C. § 1057(b).

As to third-party registrations, they may be used in the manner of a dictionary to show that a mark or a portion of a mark is conceptually weak, *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015), to the extent that they identify “similar goods.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1318 (Fed. Cir. 2018); *Nat’l Cable Television Ass’n v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579 (Fed. Cir. 1991) (“[T]he ‘real world segment of the public is limited to the market or universe necessary to circumscribe purchasers or users of products or services like those being offered by the parties’ under a common mark.”). Here, both the Cited Registration and Application identify personal care preparations. Thus, the third-party registrations Applicant introduced identifying clothing and associated retail store services are not relevant to the conceptual strength of the Cited Mark for the identified Class 3 goods.⁹ This leaves only two relevant third-party use-based registrations:

1. GROOMZMEN: GENTELMEN’S REFINERY (standard characters) subject to Registration No. 5795189 for goods including “non-medicated skin care

⁹ Also irrelevant is Registration No. 5930384 for the standard-character mark BASE LAYER. See February 11, 2022 Office Action Response, TSDR 29. Although the registration covers a personal care product, namely, “deodorant,” the mark BASE LAYER is wholly distinct from the Cited Mark THE REFINERY.

preparations, namely, creams, lotions, gels, toners, cleaners and peels; skin and body topical lotions, creams and oils for cosmetic use”;¹⁰ and

2. REBELS REFINERY (standard characters) subject to Registration No. 5766555 for “personal body care goods, namely, non-medicated soaps for personal use, facial wash, facial scrub, skin moisturizer, lip balm, non-medicated beard oil.”¹¹

We find that these two third-party registrations, without more, are not sufficient to support that the Cited Mark is conceptually weak for the identified personal care products. We further note that the two third-party marks contain additional distinctive matter differentiating them from the Cited Mark and are not as similar to the Cited Mark as Applicant’s mark.

Turning to commercial strength, Applicant did not introduce any evidence of the extent of use of the two third-party registered marks in the marketplace. “[T]hird-party registrations, with no evidence of the extent of their use in commerce, [do] not diminish the commercial strength of [a mark]. ... The existence of [third-party] registrations is not evidence of what happens in the market place or that customers are familiar with [the marks].” *Sock It To Me, Inc. v. Fan*, Opp. No. 91230554, 2020 WL 3027605, at *12 (TTAB 2020) (internal quotation marks omitted); *see also In re Morinaga*, 2016 WL 5219811, at *8 (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.”); *Tony Lama Co.*

¹⁰ *Id.* at TSDR 24.

¹¹ *Id.* at 25.

v. Di Stefano, Opp. No. 92011422, 1980 WL 30120, at *10 (TTAB 1980) (third-party registrations “per se, are incompetent” to show “that the marks are known in the marketplace and have made such an impact upon purchasers that they have become conditioned to distinguish between these marks by” their differences). Nor did Applicant introduce evidence of use of any other third-party REFINERY marks. The record thus does not support Applicant’s assertion that the word REFINERY is “so commonly used” for personal care preparations “that the public will look to other elements to distinguish the source of the goods or services.”¹²

Based on the record, we find that the Cited Mark is neither conceptually nor commercially weak. It is thus entitled to a normal scope of protection.

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the “similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion Cap. Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 1321 (Fed. Cir. 2014). The issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions such that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *Geigy*

¹² Appeal Brief, 4 TTABVUE 5 (internal quotation marks omitted).

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Chem. Corp. v. Atlas Chem. Indus., Inc., 438 F.2d 1005, 1007 (CCPA 1971); *L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 WL 1267956, at *5 (TTAB 2004); *Sealed Air Corp. v. Scott Paper Co.*, Opp. No. 91055167, 1975 WL 20752, at *3 (TTAB 1975).

“Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014). We are mindful that where, as here, some of Applicant’s and Registrant’s goods are identical and legally identical, the degree of similarity necessary to find a likelihood of confusion need declines. *Coach Servs.*, 668 F.3d at 1369; *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 746 F.3d at 1321; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (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.”). That said, one feature of a mark may be more significant than another, and it is not improper, for rational reasons, to give more weight to a dominant feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *See, e.g., In re Charger Ventures*, 64 F.4th at 1382 (permissible for the Board “to focus on dominant portions of a mark”); *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306, 1305 (Fed. Cir. 2018) (it was not error for the Board to focus on dominant portions of the marks).

In the Cited Mark, REFINERY is preceded by the definite article “the,” which has no source identifying significance. *In re Thor Tech, Inc.*, Ser. No. 78634024, 2009 WL

1098897, at *2 (TTAB 2009) (addition of the word “the” at the beginning of mark “does not have any trademark significance.”); *In re Place, Inc.*, Ser. No. 76436826, 2005 WL 2874744, at *1 (TTAB 2005) (“[W]e find that the definite article THE and the generic term BAR are not distinctive terms, and they add no source-indicating significance to the mark [THE GREATEST BAR] as a whole.”). The word REFINERY is thus the dominant element of the Cited Mark.

In Applicant’s mark, REFINERY is preceded by the term BKLYN. Applicant argues that “BKLYN is the dominant element” in its mark because it is a “striking ... made-up word,”¹³ it appears first,¹⁴ and it “contains the unusual BK combination (*i.e.*, words in the English language do not have this two letter combination).”¹⁵ We disagree.

The Examining Attorney introduced evidence that BKLYN is an abbreviation for Brooklyn, a borough in New York City.¹⁶ Based on this evidence, the Examining Attorney required that Applicant disclaim BKLYN on the ground that the term “is primarily geographically descriptive of the origin of applicant’s goods[.]”¹⁷ Applicant complied with the disclaimer requirement (without argument), thus conceding that BKLYN is geographically descriptive.¹⁸ *In re Six Continents Ltd.*, Ser. No. 88430142,

¹³ Appeal Brief, 4 TTABVUE 8.

¹⁴ Reply Brief, 7 TTABVUE 5.

¹⁵ *Id.*

¹⁶ August 27, 2021 Office Action, TSDR 13, 16.

¹⁷ *Id.* at 4.

¹⁸ February 11, 2022 Office Action Response, TSDR 11, 13.

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2022 WL 407385, at *8 (TTAB 2022) (“Applicant’s disclaimer is a concession that ‘Suites’ is not inherently distinctive.”); *see also In re Zuma Array, Ltd.*, Ser. No. 79288888, 2022 WL 3282655, at *7 (TTAB 2020) (disclaimer of the word SMART was a concession of the merely descriptive nature of the term for electronic sensor modules); *In re DNA Holdings Ltd.*, Ser. No. 76331011, 2005 WL 3492365, at *8 (TTAB 2005) (“[I]t has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term as applied to the goods or services in [the application or registration] and an acknowledgment of the lack of an exclusive right therein at the time of the disclaimer.”). Applicant’s disclaimer of the geographically descriptive abbreviation BKLYN is a rational reason for giving the term less weight in our likelihood of confusion analysis. *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018); *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 WL 1620989, at *3 (TTAB 2018) (finding geographically descriptive term that had been disclaimed “entitled to less weight in the likelihood of confusion determination”).

Moreover, because BYLYN is an abbreviation for BROOKLYN, consumers are not likely to dissect the two letters BK from the term as a whole and perceive them as “an unusual ... combination.”¹⁹ Rather, consumers will perceive BYLYN in its entirety as an abbreviation for Brooklyn and will perceive this term as merely modifying the word REFINERY. *Sabhnani*, 2021 WL 6072822, at *8 (“adjective ROYAL ... modifies and is subordinate to the noun MIRAGE”).

¹⁹ Reply Brief, 7 TTABVUE 5.

For all of these reasons, we find that REFINERY is the dominant element of Applicant's Mark just as it is the dominant element of the Cited Mark. The fact that BKLYN is the first word in Applicant's mark does not change this determination. *Tao Licensing, LLC v. Bender Consulting*, Can. No. 92057132, 2017 WL 6336243, at *17 (TTAB 2017) (“[T]here is no mechanical test to select the dominant element of a mark.”).

Turning to appearance, the presence of the abbreviation BKLYN as the first word in Applicant's mark distinguishes it somewhat from the Cited Mark, but we find the marks in their entireties are more similar than different because they share the dominant word REFINERY, the preceding words (THE v. BKLYN) are not distinctive, and the abbreviation BKLYN merely serves to modify REFINERY. *In re Charger Ventures*, 64 F.4th at 1382 (“an additional word or component may technically differentiate a mark but do little to alleviate confusion”); *In re Dare Foods Inc.*, Ser. No. 88758625, 2022 WL 970319, at *6 (TTAB 2022) (“the presence of an additional term in [Applicant's] mark does not necessarily eliminate the likelihood of confusion if some terms are identical.”) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010)).

With respect to sound, Applicant argues that BKLYN “readily distinguishes” Applicant's mark because “each letter of BKLYN would likely be pronounced separately (i.e., B, K, L, Y, N) because BKLYN is not a real word and BK cannot be pronounced.”²⁰ Applicant has not introduced any evidence to support this assertion

²⁰ Reply Brief, 7 TTABVUE 6.

nor is there any matter in Applicant's mark (such as periods between the letters) that would suggest to consumers that they should pronounce the letters separately. Further, as discussed, the record demonstrates that BKLYN is an abbreviation for the word BROOKLYN and would be pronounced as such. Thus, while the addition of the abbreviation BKLYN in Applicant's mark differentiates it somewhat in sound from the Cited Mark, the difference is not so great as Applicant argues. The identical word REFINERY in both marks results in a similarity in sound.

As to connotation and commercial impression, Applicant argues that Brooklyn is "known as funky and young and cool" and this "cool, hip, commercial impression ... is completely lacking in the Cited Mark."²¹ This argument is unpersuasive. Both marks connote and create the commercial impression of a "refinery" – a building and equipment for refining. The additional term BKLYN in the Cited Mark merely conveys that the referenced "refinery" is in Brooklyn. Based on the shared connotation and commercial impression of a "refinery," we find that consumers familiar with the Cited Mark and goods who encounter Applicant's mark and goods, or vice versa, are likely to mistakenly believe the goods emanate from a common source. *See, e.g., In re Toshiba Med. Sys. Corp.*, Ser. No. 79046106, 2009 WL 1896059, at *5 (TTAB 2009) (holding VANTAGE TITAN for MRI diagnostic apparatus, and TITAN for medical ultrasound device, likely to cause confusion; VANTAGE TITAN "more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medial ultrasound devices").

²¹ Appeal Brief, 4 TTABVUE 8-9.

II. Conclusion

As a final step, we “weigh the *DuPont* factors used in [our] analysis and explain the results of that weighing.” *In re Charger Ventures*, 64 F.4th at 1384 (emphasis omitted). The second and third *DuPont* factors weigh heavily in favor of finding a likelihood of confusion as the goods are in part identical and legally identical and the trade channels and consumers for those goods are presumably the same. The first factor also favors a likelihood of confusion as we find that the marks in their entirety are more similar than different in appearance, sound, connotation and commercial impression. We find the sixth *DuPont* factor neutral because the record does not support that the shared word REFINERY is conceptually or commercially weak for personal care products. We further note that Applicant’s mark is more similar to the Cited Mark than the two third-party registered marks for personal care products.

Because all of the relevant *DuPont* factors favor a likelihood of confusion or are neutral, we find that Applicant’s mark BKLYN REFINERY for the identified goods in International Class 3 is likely to cause confusion with the Cited Mark THE REFINERY for in part identical and legally identical goods.

Decision: The refusal to register Applicant’s mark under Section 2(d) of the Trademark Act is affirmed. The Application will proceed with respect to the goods in International Class 25 only.