

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. 90625153
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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 VECTOR (in standard characters) for the following goods, as amended: “Firearms; Component parts for guns,” in International Class 13.¹

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

¹ Application Serial No. 90625153 was filed on April 5, 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).

there is a likelihood of confusion with the mark in U.S. Registration No. 5488176, VECTOR (in standard characters), for “knives; knives, namely, pocket knives, sport knives, utility knives, tactical knives, and survival knives,” in International Class 8.²

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.³ 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 Trademark Act 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 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

² Registration No. 5488176 issued on June 5, 2018.

³ The evidence attached to Applicant’s brief was submitted during prosecution of the application, Therefore, these materials are duplicative of evidence already properly of record and thus unnecessary. *In re Thor Tech Inc.*, 85 USPQ2d 1474, 1475 n.3 (TTAB 2007) (attaching evidence from the record to a brief is duplicative and unnecessary).

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 VECTOR mark and Registrant's standard character VECTOR 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 goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; or copies of prior use-based registrations of the same mark for both Applicant’s goods and the goods listed in the cited registration. *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 Co. v. Packard Press Inc.*, 62 USPQ2d at 1004; *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 VECTOR is identical to Registrant’s cited mark VECTOR, all that is required is a “viable relationship” between Applicant’s firearms and component parts for guns and Registrant’s knives. *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 Applicant's and Registrant's goods are related because "entities who provide firearms often provide knives."⁴ As support, the Examining Attorney submitted screen captures from the websites of third-parties showing both firearms and knives being sold together under the same mark. Examples include⁵:

- The website of Beretta shows both firearms and knives under the BERETTA mark.⁶
- The website of Browning shows both firearms and knives under the BROWNING mark.⁷
- The webpages from Ruger show both firearms and knives under the RUGER mark.⁸
- The website of Sig Sauer shows both firearms and knives under the SIG SAUER mark.⁹

⁴ 8 TTABVUE 4. (The Examining Attorney's brief).

⁵ The Examining Attorney, in her Final Office Action of March 31, 2022, referenced third-party use by Heckler & Koch, Springfield Armory and Wilson Combat on firearms and knives, and provided hyperlinks to where the information presumably resides. The Examining Attorney did not attach the corresponding webpages to her office action. However, 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"). We accordingly treat the references as unsupported argument, and accord them no probative value.

⁶ September 17, 2021 Office Action; TSDR 7-8.

⁷ September 17, 2021 Office Action; TSDR 9-10.

⁸ September 17, 2021 Office Action; TSDR 11-12.

⁹ November 9, 2022 Denial of Request for Reconsideration; TSDR 4-11.

- The webpages from Smith & Wesson show both firearms and knives sold under on SMITH & WESSON mark.¹⁰

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 ["world-renowned"] firearms brand to knives and a host of other goods that are also unrelated to firearms..." Applicant's brief, p. 7.¹¹ 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 well-known 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 knives, which are offered on the same website under the same mark. 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..

Applicant, pointing to a single webpage from Hogue, an apparent knife grip company advertising Sig Sauer knives, argues that any such knives offered by prominent firearms companies "are usually made by knife companies co-branding

¹⁰ November 9, 2022 Denial of Request for Reconsideration; TSDR 12-20.

¹¹ 6 TTABVUE 8. In an attempt to support this argument, Applicant included hyperlinks in both its brief, and its office action response, presumably to product pages on the Beretta, Browning, and Ruger websites, and not the pages themselves. Applicant's March 17, 2022 Response; TSDR 5-7. As noted, hyperlinks do not make the information displayed at such links of record. *See TV Azteca v. Martin*, 128 USPQ2d at 1790 n.14.

with a decorative gun company brand.” Applicant’s brief, p. 11.¹² In the absence of direct evidence, we find Applicant’s assertion unavailing. Moreover, even if a firearms company were to contract out such manufacturing, it does not follow that consumers would believe that a knife “branded” with Sig Sauer would emanate from another source.

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 knives.” Applicant’s brief, p. 12.¹³ As noted, we compare the goods based on the respective identifications set forth in the application and cited registration. *Detroit Athletic*, 128 USPQ2d at 1052.

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

¹² 6 TTABVUE 12. See also Applicant’s March 9, 2022 Response to Office Action, TSDR 121-22.

¹³ 6 TTABVUE 13.

Here, we find the Examining Attorney's third-party use evidence sufficient to show that Applicant's firearms are related to Registrant's knives, because such goods are often sold by the same third-party sources under the same marks. As Applicant acknowledges, "knives 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 during, for example, a hunting or fishing 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 catalogs and are purchased by the usual classes of purchasers which, in this case, include ordinary consumers seeking to purchase firearms and knives. 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). We accordingly find that the channels of trade and classes of consumers, at a minimum, overlap. 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.”).

V. Sophistication of the Purchasers

Applicant contends that “the high expectations and costs associated with firearms and other high-performance products, including certain kinds of knives, are substantial and purchased only after careful deliberation by highly sophisticated and professional buyers seeking high-performance.” Applicant’s br. p. 15.¹⁴ 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.* The record shows the cost of some firearms exceeds \$2,000 and that of knives to be as much as \$150. Applicant’s identification of goods, however, must be read to include even the lowest priced firearms and knives. There is also 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 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 and knives 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

¹⁴ 6 TTABVUE 16.

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. Thirteenth *DuPont* Factor – Coexisting Third-Party Registrations

Essentially, Applicant argues in its brief that there are 31 examples where trademarks were allowed to coexist for both knives in Class 8 and firearms in Class 13, by different owners without confusion, and that Applicant’s VECTOR mark should be allowed to coexist with the cited registration. Applicant’s brief, pp. 13-15.¹⁵ We reproduce the table set forth in Applicant’s brief, noting that the only information provided are the listings of the marks and the Applicant’s mere categorization of the marks as either firearms or folding knives registrations:

¹⁵ 6 TTABVUE 14-16.

	Firearms Registrations by One Owner	Folding Knives Registrations by a Different Owner
1	SPECTRE rejected but not based on knives	SPECTRE
2	BARRAGE rejected but not based on knives	BARRAGE
3	LEOPARD	LEOPARD
4	SIDEWINDER suspended, but not based on knives	SIDEWINDER
5	FIREBIRD	FIREBIRD
6	JAVELIN	JAVELIN
7	RESOLUTE	RESOLUTE
8	SCEPTER allowed	SCEPTER
9	IDEAL	IDEAL
10	VORTEX	VORTEK
11	OSPREY	OSPREY
12	BT	BT
13	SIDEWINDER	SIDEWINDER
14	LINK	LINK
15	POLARIS	POLARIS
16	TRACKER	TRACKER
17	AXIS	AXIS
18	ACE	ACE
19	PRIMUS	PRIMUS
20	VANTAGE	VANTAGE
21	BANTAM	BANTAM
22	SPECTER	SPECTRE
23	CANNONBALL	CANNONBALL
24	FIREBIRD	FIREBIRD
25	PREMIUM	PREMIUM
26	NOVA	NOVA
27	ZOMBIES	ZOMBIE
28	CHEETAH	CHEETAH
29	SWAN	SWAN
30	HUNTER	HUNTER
31	SHRIKE	SHRIKE

After reviewing the 31 pairs of registration records submitted with Applicant's March 9, 2022 Response to Office Action, TSDR 13-120, we find there are at best eight such pairs of registrations which are probative; only four cover firearms and knives

and the other four cover tangentially-related goods in the nature of firearm accessories or parts and knives.¹⁶ The registration pairs are as follows:

JAVELIN – Reg. No. 5874457 (bipod for firearms); Reg. No. 3878205 (folding knives);

RESOLUTE – Reg. No. 6336679 (survival knives); Reg. No. 5747665 (firearms);

SIDEWINDER – Reg. No. 5008725 (muzzle brakes); Reg. No. 4717360 (knives);

LINK – Reg. No. 5045302 (component parts of guns); Reg. No. 4973928 (folding pocket knives);

TRACKER – Reg. No. 5094221 (firearms); Reg. No. 6448041 (hunting knives);

AXIS – Reg. No. 4477909 (firearms); Reg. No. 3129594 (knives);

BANTAM – Reg. No. 3563781 (grips for small arms); Reg. No. 3153979 (folding knives); and

CHEETAH – Reg. No. 1912456 (shotguns and pistols); Reg. No. 5176318 (folding knives).

These eight registration pairs (four of which are only somewhat related to the goods at issue) do not convince us that it is the practice of the USPTO to allow identical marks to register for firearms and knives, respectively. The pairs of registrations may reflect the views of coexisting registration owners. While acknowledging that the Office should strive for consistency, prior decisions and actions of other trademark examining attorneys in registering other marks or

¹⁶ Four pairs include a partial registration taken from the TSDR data base that is both illegible and does not show the goods; twelve pairs are not for identical marks – one or both include a design element, and another seven pairs do not cover firearms in one registration and knives in the other.

approving marks for registration have little evidentiary value and are not binding upon the Board. *See In re Cordua Rests. Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case must be decided on its own merits, and “[w]e do not believe that our decision here is inconsistent with the registration of the third-party marks cited by Applicant, but to the extent that it is, it is the decision required under the statute on the record before us.” *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, *11 (TTAB 2020). *See also, In re Embiid*, 2021 USPQ2d 577, at *38 (“[T]he third-party registrations relied on by applicant cannot justify the registration of another confusingly similar mark ..., because each case must be decided independently of prior decisions, and ... the marks involved are so different from the present case that, even if they were relevant, they would merely stand for the principle that the Office determines each case on its own merits.” (cleaned up)).

VII. Conclusion

We conclude that confusion is likely between Applicant’s VECTOR mark for “Firearms; [and] Component parts for guns and the cited VECTOR mark for “knives; knives, namely, pocket knives, sport knives, utility knives, tactical knives, and survival knives.” We so conclude due to the identical marks, the relatedness of the goods, and the overlap in trade channels and purchasers. Finally, to the extent that there is any doubt regarding the likelihood of confusion, such doubt is resolved against Applicant, *see In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988), because Applicant, as the newcomer, had an obligation to select a

mark that would avoid confusion, but it did not do so. *See L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012) (“The fact remains that a newcomer has both the opportunity and obligation to avoid confusion.”).

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