

Mailed September 29, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

K2 Sports, LLC

v.

Joyride Snowboards LLC

Opposition No. 91263939

CORRECTION ORDER

Cindy L. Caditz, Scott R. Commerson, and Peter K. Bae,
of Davis Wright Tremaine LLP, for K2 Sports, LLC.

Ian D. Gates, of Kolitch Romano Dascenzo Gates LLC,
for Joyride Snowboards LLC.

Before Wolfson, Lynch and Cohen,
Administrative Trademark Judges.

By Wolfson, Administrative Trademark Judge:

The reference to Administrative Trademark Judge Greenbaum, appearing in the panel title of the Board's decision of September 22, 2023, has been corrected to confirm that Judge Cynthia Lynch attended the oral hearing and was on the panel for the decision. No other changes have been made to the decision.

This Opinion is Not a
Precedent of the TTAB

Hearing: August 10, 2023

Mailed: September 22, 2023

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for Joyride Snowboards LLC.
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Before Wolfson, Lynch and Cohen,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Joyride Snowboards LLC filed an application to register the standard character mark JOYRIDE SNOWBOARDS (“SNOWBOARDS” disclaimed) on the Principal Register for “snowboards” in International Class 28.¹

¹ Application Serial No. 88808669, filed February 24, 2020, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), alleging Applicant’s bona fide intent to use the mark in commerce.

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K2 Sports, LLC (“Opposer”) opposes registration of Applicant’s mark on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on its allegations of prior use and ownership of registrations for the standard character mark RIDE for “snowboards and accessories for snowboards; namely, snowboard boots, snowboard bindings and parts therefor, snowboard boot bags and snowboard leashes” in International Class 28² and “clothing, namely, jackets, coats, parkas, sweatshirts, pullovers, shirts, t-shirts, pants, snowboard pants, ski bibs, gloves, hats, caps, snowboard boots” in International Class 25.³ Notice of Opposition, 1 TTABVUE.⁴ Applicant filed an answer denying the salient allegations in the Notice of Opposition. 4 TTABVUE.

The case is fully briefed.⁵ The parties appeared before the Board for an oral hearing. 61 TTABVUE. For the reasons discussed below, we dismiss the opposition.

² Reg. No. 1878248, issued February 7, 1995; renewed. The mark registered as a typeset mark, now referred to as a standard character mark. *See* Trademark Rule 2.52(a); 37 C.F.R. 2.52(a).

³ Reg. No. 4431131, issued November 12, 2013; Sections 8 and 15 combined declaration accepted and acknowledged.

⁴ Citations in this opinion refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

⁵ Opposer’s briefs are at 49 TTABVUE (confidential main brief); 50 TTABVUE (public version); 53 (confidential reply brief) and 54 (public version reply brief). Applicant’s brief is at 51 TTABVUE.

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of the involved application. In addition, the parties introduced the following evidence:

A. Opposer's Evidence

- Testimonial Declarations of
 - Opposer's in-house counsel, Michael Meints, including an accompanying exhibit. 15 TTABVUE;
 - Opposer's Vice President and General Counsel, Julie VanDerZanden, including accompanying exhibits. 16 TTABVUE;
 - Opposer's Vice President of Financial Planning & Analysis, Stewart Beall, including accompanying exhibits. 18 TTABVUE (confidential), 24 TTABVUE (public version);
 - Opposer's Global Brand Director, Jim Linnberg, including accompanying exhibits. 19 TTABVUE; 48 TTABVUE (rebuttal declaration). Exhibits filed at 19-23 TTABVUE with more legible copies of Exhibits 153-200 filed at 26-34 TTABVUE.
- Notices of Reliance on
 - Copies of the registration certificates and assignment documents, showing current title and status, of Opposer's pleaded registrations. 11 TTABVUE;
 - Printouts of printed publications purportedly showing third-party recognition of Opposer's RIDE mark. 12 TTABVUE;
 - Excerpts from two websites: www.whitelines.com and www.snowboarder.com. 13 TTABVUE;
 - Excerpts from social media websites (Facebook, Twitter, TikTok, Pinterest, Instagram, YouTube) purporting to show third-party recognition of the RIDE mark. 14 TTABVUE;

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- Excerpts of snowboarding videos on YouTube and Vimeo, purporting to show third-party recognition of the RIDE mark. 17 TTABVUE; and
- Excerpts (on rebuttal) of copies from Opposer's responses to Applicant's discovery requests, additional copies of material from snowboarding websites and copies of third-party registrations. 47 TTABVUE.

B. Applicant's Evidence

- Testimonial Declarations of
 - Russell Taylor, Applicant's sole member and owner. 45 TTABVUE; and
 - Ken Dale Greengard, former owner of Joyride Ltd. 46 TTABVUE.
- Notice of Reliance on
 - Opposer's Responses to Applicant's First Set of Requests for Admission and its First Set of Interrogatories; copies of documents produced by Opposer; copies from Applicant's search of the USPTO's Trademark Electronic Search System (TESS) database of third-party registrations; excerpts from third-party websites; and online dictionary definitions for "ride" and "joyride." 44 TTABVUE.

II. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action, formerly referred to as "standing" by the Federal Circuit and the Board, is an element of the plaintiff's case in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277 (Fed. Cir. 2020); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837 (Fed. Cir. 2020); *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). To establish entitlement to a statutory cause of action, a plaintiff must demonstrate: (i) an

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interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration of the mark. *Corcamore*, 2020 USPQ2d 11277, at *4; *see also Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Spanishtown Enters. v. Transcend Res., Inc.*, 2020 USPQ2d 11388, at *1 (TTAB 2020).

Opposer's entitlement to oppose registration of Applicant's mark is established by its unchallenged pleaded registrations, which Opposer entered into the record by way of notice of reliance. *See, e.g., Shenzhen IVPS Tech. Co.*, 2022 USPQ2d 1035, at *13-14 (TTAB 2022) (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000)). Moreover, "Applicant does not dispute Opposer's standing or priority." Applicant's brief, 51 TTABVUE 8.

III. Likelihood of Confusion

A. Priority

Because Opposer's pleaded registrations are of record and Applicant has not counterclaimed to cancel them, Opposer's priority is not at issue with respect to the mark and goods identified in its registrations. *See, e.g., Cunningham*, 55 USPQ2d at 1844; *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182

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USPQ 108, 110 (CCPA 1974)) (priority not at issue where opposer introduces registration into evidence).

Tacking, typically invoked by a party to prove its priority, may apply where the party is attempting to “tack” later use (or constructive use) of a mark to its earlier use of the same or similar mark, in an attempt to claim it was the first to use its mark. In this case, Joyride Ltd. owned Reg. No. 1810869, issued on 12/14/1993 for the typed mark JOYRIDE for “tee-shirts, sweatshirts, pants, socks, hats, caps and snowboard boots” in International Class 25 and “snowboards and snowboard bindings” in International Class 28. Joyride Ltd. sold the mark and registration to Tech Group Industries in the early 2000s. Greengard Decl., 46 TTABVUE 6-7. The registration was cancelled in 2010 on the ground of abandonment. VanDerZanden Decl., 16 TTABVUE 5.

We do not consider whatever use may have been made of the JOYRIDE mark from 1991-2010 by Joyride Ltd. or Tech Group Industries to inure to Applicant’s benefit under the tacking doctrine. “JOYRIDE is a heritage brand, that is, one that existed historically but ultimately was discontinued” before Applicant started using it in 2019. Applicant’s brief, 51 TTABVUE 8. *See Van Dyne-Crotty Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 17 USPQ2d 1866, 1868 (Fed. Cir. 1991) (tacking is permitted only in “rare instances”). We do consider, however, the possible impact any concurrent use of the heritage JOYRIDE mark and Opposer’s RIDE mark may have had, as discussed more fully below.

B. Analysis of the *DuPont* Factors

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). Opposer bears the burden of establishing that there is a likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848.

We consider the likelihood of confusion factors for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1164 (Fed. Cir. 2019). “Not all of the *DuPont* factors are necessarily ‘relevant or of equal weight in a given case, and any one of the factors may control a particular case.’” *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“the various evidentiary factors may play more or less weighty roles in any particular determination”).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See 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.”). We further consider the strength of Opposer’s marks, the

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trade channels and classes of prospective consumers, and the alleged sophistication of the consumers. *Guild Mortg.*, 129 USPQ2d at 1162-63.

1. Similarity or Dissimilarity of the Goods – *DuPont* Factor Two

We start with the second *DuPont* factor, under which we compare the goods as they are identified in the application and the cited registrations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). Applicant’s application is for “snowboards.” The identification of goods in Opposer’s Reg. No. 1878248 includes “snowboards.” These goods are identical. Opposer’s Reg. No. 4431131 for clothing includes “snowboard pants” and “snowboard boots.” These goods are highly related as they are specifically designed for use with snowboards. *See, e.g.*, Linnberg Decl., 19 TTABVUE 4 (“The RIDE trademark is printed on snowboards [and] on snowboard boots, snowboard bindings, and on apparel.”); 12 TTABVUE 5-163, Exhibits 7-17 (third-party publications, including “Snowboard Buyers Guide” and “Transworld Snowboarding Gear Guide,” advertising snowboards, boots and apparel); 26-34 TTABVUE; Exhibits 153-200 (Opposer’s catalogs offering, inter alia, snowboard pants and snowboard boots under the RIDE mark).

The second *DuPont* factor favors a finding of likelihood of confusion.

2. Channels of Trade, Classes of Consumers - *DuPont* Factor Three

The third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. To the extent the goods are identical, we must presume that the channels of trade and classes of

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purchasers for these goods are the same. *See 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. Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *see also 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). As to the related goods, Opposer sells its goods “through authorized Ride Snowboards dealers that are located throughout the United States” and “directly to consumers through its website at www.ridesnowboards.com.” Linnberg Decl., 19 TTABVUE 5. “The goods that Ride sells under the RIDE mark are targeted towards, and purchased by, snowboarders.” *Id.* Applicant agrees that the consumers are the same, and does not argue that the trade channels are different. *See Applicant’s Notice of Reliance*, 44 TTABVUE 333 (third-party Internet advertising for snowboards stating that snowboard bindings are “frequently bought together” with snowboards and that “others also viewed” boots, gloves and jackets).

The third *DuPont* factor favors a finding of likelihood of confusion.

3. Strength of Opposer’s RIDE Mark – *DuPont* Factors Five and Six

The fifth and sixth *DuPont* factors consider “the strength of the prior user’s mark as a central factor in the likelihood of confusion analysis.” *Spireon, Inc. v. Flex LTD*, 2023 USPQ2d 737, at *3-4 (Fed. Cir. 2023) (“Two of the *DuPont* factors (the fifth and sixth) consider strength.”). We examine the conceptual strength of the mark as well,

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assessing the extent to which the mark has acquired commercial strength in the marketplace. *DuPont*, 177 USPQ at 567.

We first consider the inherent, or conceptual strength, of the RIDE mark, “based on the nature of the mark itself.” *DC Comics v. Cellular Nerd LLC*, 2022 USPQ2d 1249, at *23 (TTAB 2022). In connection with “snowboards,” the word “ride” describes the act of standing or otherwise to be borne along on a snowboard while in motion. Opposer admitted, in response to Applicant’s Request for Admission No. 9, that “the word ‘ride’ has been used in the snow sports industry as a verb in connection with the act of snowboarding.” 44 TTABVUE 23. Applicant’s witness explained, “Riding’ became the prominent term to describe the act of snowboarding.” Taylor Decl., 45 TTABVUE 7. These statements, together with the dictionary definitions of “ride” that include: “to be borne along on or in a vehicle or other kind of conveyance,” “to move along in any way; be carried or supported,” and “to sit on and manage (a horse, bicycle, etc.) so as to be carried along,” 44 TTABVUE 316, demonstrate that Opposer’s RIDE mark is highly suggestive for snowboards.⁶

We next consider the commercial strength of Opposer’s mark. Opposer contends that its RIDE mark is famous. When fame exists, it plays a dominant role in the

⁶ Applicant also submitted copies of approximately 20 third-party registrations for marks containing the term “ride” or “rider” for “snowboards.” 44 TTABVUE 328-342 and 34-116. *In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1745 (TTAB 2016) (“[T]hird-party registrations are relevant evidence of the inherent or conceptual strength of a mark or term because they are probative of how terms are used in connection with the goods or services identified in the registrations.”). As the majority of these registrations have been canceled due to abandonment, however, the overall probative value of the remaining quantity is minimal.

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likelihood of confusion analysis. Indeed, famous marks “enjoy a wide latitude of legal protection.” *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) (quoting *Recot, Inc. v. Benton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000)). Fame is not “an all-or-nothing factor,” however. *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017). Opposer’s mark exists “along a spectrum from very strong to very weak.” *Id.* (quoting *Palm Bay Imps. V. Veuve Clicquot Ponsardin Masion Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)). In deciding where along the spectrum Opposer’s mark falls, we must consider the RIDE mark from the perspective of “the class of customers and potential customers” of the relevant goods, in this case consumers and potential consumers of snowboards and related clothing. *Palm Bay*, 73 USPQ2d at 1695 (“[A] mark’s renown within a specific product market is the proper standard.”).

Fame may be measured indirectly by the volume of sales and advertising expenditures for the goods identified by the marks at issue, “the length of time those indicia of commercial awareness have been evident,” widespread critical assessments and through notice, by independent sources, of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp.*, 63 USPQ2d at 1305-06, 1309. We examine these factors below.

Length and Exclusivity of Use

Opposer has continuously used the RIDE trademark since 1992 in connection with snowboards. VanDerZanden Decl., 16 TTABVUE 4. During this time, Opposer

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contends it has “vigorously defended the RIDE trademark.” Meints Decl., 15 TTABVUE 8.

“[E]vidence of successful enforcement frequently is submitted to show strength or fame under the fifth *DuPont* factor,” *Monster Energy v. Lo*, 2023 USPQ2d 87, at *44 n.83; *Burns Philp Food Inc. v. Modern Prods. Inc.*, 24 USPQ2d 1157, 1158 n.2 (TTAB 1992) (policing efforts go to the strength of the mark). This is because enforcement efforts tend to show that a party’s use of its mark is substantially exclusive. However, “the mere fact that [oppositions or cancellation actions] were filed is not reasonably probative of the fame inquiry, which is focused on whether the mark has achieved ‘extensive public recognition and renown’ [and] not on enforcement efforts.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *Coach Servs.*, 101 USPQ2d at 1720).

Michael Meints, in-house counsel for K2 Sports, LLC since 2019, and attorney Julie VanDerZanden, with knowledge of Opposer’s trademark matters from 2003 to 2019, testified as to Opposer’s enforcement actions. Exhibits from a search done through TTABVUE and attached to the VanDerZanden declaration summarize Opposer’s filings at the USPTO objecting to registration of marks containing the term RIDE. 16 TTABVUE, Exhibits 1 and 2. Although there are a significant number of entries, the exact number of proceedings that were commenced cannot be determined because Opposer did not distinguish between filings for extensions of time to oppose and actual oppositions or cancellations. Also missing is the following

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basic information: the basis for the filing, the goods involved, and the outcome of the proceedings. This substantially reduces the probative value of the information.

Accompanying the Meints declaration is a listing of companies with whom K-2 Corporation or K2 Sports, LLC has entered into a settlement agreement “in connection with [their] efforts to enforce [their] rights in the RIDE mark.” 15 TTABVUE 4; Exhibit 208. The overwhelming majority of these involve apparel; only four reference “snowboards.” Also, the involved marks are not indicated. We cannot say that Opposer’s enforcement matters resolved in this fashion are “probative of the ... [fame] of ... [its] mark as opposed to the ... [defending] parties’ desire to avoid litigation.” *In re Dimarzio, Inc.*, 2021 USPQ2d 1191, at *12 n. 24 (TTAB 2021) (citing *In re Wella Corp.*, 565 F.2d 143, 196 USPQ 7, 8 n.2 (CCPA 1977)).

Also affecting Opposer’s claim of exclusivity is the historical co-existence of the heritage JOYRIDE mark and Opposer’s RIDE marks. 51 TTABVUE 8. The two marks were used concurrently from 1992 to 2010.⁷ The snowboard industry may have changed since then, such that “[s]nowboards are now highly engineered products,” Opposer’s brief, 50 TTABVUE 13, but Opposer does not allege and prove that the market for the goods and classes of consumers has changed significantly. “The snowboarding world, while much larger than when it began, is still a relatively small community.” Taylor Decl., 45 TTABVUE 5. The years of co-existence indicate

⁷ “Ride Snowboard’s and K2’s trademark rights are based on both federal registrations and, as discussed above, continuous use since 1992.” VanDerZanden Decl., 16 TTABVUE 4. “Joyride’s first year of real sales was the 1991-1992 season, and we had orders for a bit over 700 boards.” Greengard Decl., 46 TTABVUE 4.

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that Opposer's use over the years has not been exclusive, weighing against commercial strength.

Sales Success and Advertising Figures

Opposer currently sells in all 50 states through its website, and "through authorized Ride Snowboards dealers" in 39 states. Beall Decl., 24 TTABVUE 4. Confidential yearly sales were reported for the years 2015-2020. *Id.* at 24 TTABVUE 5-6, Exhibit 206 (confidential).⁸ Sales from Opposer's clothing licensee were also reported, 24 TTABVUE 6; however, no distinction was made between domestic and foreign sales nor was the domicile or citizenship of the licensee provided. Opposer provided a confidential graph of its sales for the years 2008-2020, during which time Opposer's foreign sales exceeded domestic sales in all but one year. 18 TTABVUE 11, Exhibit 206 (confidential). Sales overseas were nearly double that of sales in the United States for the years 2015-2018.

Opposer's advertising and promotional expenses from 2008-2020 include athlete and royalty expenses, expenses for industry meetings and trade shows, promotional product expenses, and websites expenses. *Id.* Opposer "has participated in every national Outdoor Retailer Snow Show (hosted by Snowsports Industry America) from 1993 to 2020." *Id.* at 9. Exhibit 207 delineates these expenses but does not indicate how much was spent on foreign versus domestic advertising. Also, Opposer has not provided context, such as market share or sales or advertising figures for comparable types of goods, to enable us to determine the extent to which Opposer's

⁸ As sales figures have been filed under seal, we refer to them only generally.

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sales and expenses may indicate the well-known nature of its mark and to determine whether consumers recognize the mark. *See Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018) (citing *Bose Corp.* at 1309) (“Raw numbers of product sales and advertising expenses may have sufficed in the past to prove fame of a mark, but raw numbers alone in today’s world may be misleading.”).

Opposer argues that its RIDE mark enjoys strong recognition among snowboarders. Opposer advertises its goods through its website, which site was accessed by 2.8 million users in the U.S. from January 1, 2010 to April 30, 2021. Linnberg Decl., 19 TTABVUE 6. Since at least as early as 1994, Opposer has distributed yearly product catalogs to dealers and consumers. *Id.* at 4. Opposer sponsors professional (“Pro Team”) and amateur (Global AM Team”) snowboard teams, who “are required to promote Ride snowboards,” and are featured in snowboarding movies filmed by Opposer as well as by third parties. *Id.* at 7. Members of the Pro Team also compete using RIDE snowboards and bindings, participate in demonstration events, and are featured “on Ride’s website, Ride’s social media accounts, and Ride’s features and advertisements in print publications and catalogues.” *Id.* at 7-8. Opposer has received several awards for its RIDE snowboards. *E.g.*, 19 TTABVUE 11, Exhibits 82–86, 90–93.

“Exhibits 212 – 225, true and correct copies of Internet documents showing third-party recognition of the RIDE mark, demonstrate that Ride has been consistently recognized as one of the top snowboard companies in the world from the early 2000s.”

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Linnberg Rebuttal Decl., 48 TTABVUE 3. These exhibits, attached to Opposer's rebuttal notice of reliance at 47 TTABVUE, comprise articles from online magazines directed to prospective consumers of snowboards. Several of the articles rated snowboard companies, including Opposer. For example:

- In 2017, Opposer was included in an article entitled "A-Z of Snowboard Brands." 47 TTABVUE 39.
- In 2022, snowboardselector.com listed Opposer in its article "Snowboard Brands - The Complete List A-Z," noting that Opposer is "a medium size, independent brand, but they are comfortable with that status. In their own words: "For RIDE, it's not about being the biggest ... it's about being the best at what we do and truly becoming a great snowboard company." *Id.* at 108.
- Also in 2022, properpeaks.com gave Opposer's snowboards "good grades" in an article entitled "Top 21 Snowboard Brands: Ranked (Which Snowboard Brand to Pick)":

Ride snowboards get good grades in the quality, graphics and price departments. For park or mountain boards, Ride continues to deliver year after year with easy-to-ride snowboards that are always pushing the boundaries. *Id.* at 212.

Other articles suggest that Opposer is less known. For example, Exhibit 225, an entry from Wikipedia's 2014 "Category: Snowboarding companies" does not list Opposer. 47 TTABVUE 255. The 2020 article from curated.com entitled "The 13 Best Snowboard Brands" does not list Opposer. *Id.* at 114. It does however mention Opposer as part of its listing for "K2," stating:

Mastermind[] of both K2 snowboards and Ride snowboards, [K2] brings high quality and easily accessible snowboard boots, bindings, helmets, snowboards, and much more to the table. *Id.* at 121.

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A recent article from crowsurvival.com entitled “The 12 Best Snowboard Brands of 2023” also distinguishes K2 and Opposer. That article lists “K2” as No. 4, *id.* at 236, and Opposer as No. 6, *id.* at 235-36.

As for K2, the article states:

K2 has been on the market since 1962, and the guys at K2 certainly know what they are doing. This company isn’t as well-established in the world of snowboarding as Burton in spite of being 15 years older but it still is a reputable brand that has a good selection of snowboards to offer.

As for Opposer, the article states:

Ride’s line hit the snowboarding market in 1992 with just 4 models, but the team’s hard work along with a great ad campaign have ensured a lasting success for the brand.

...

This is far behind what giants like Burton offer, but if you already have apparel and are looking to update your core snowboard gear, Ride may be the brand to go for.

The above unsolicited media coverage shows that Opposer’s line of RIDE snowboards have achieved a measure of public awareness, but not to a level whereby the mark would fall on the far end of the spectrum. Given the separate mentions of K2 and Opposer by the media, consumers may be unaware that the companies have a corporate relationship, such that any awareness of K2 would carry over to Opposer. Moreover, there is no indication of how widely the online articles may have circulated to the relevant purchasing public.

K2’s marketing materials include examples of descriptive and generic uses of the term “ride” in connection with snowboarding, such as “This makes your splitboard **ride** more like a solid snowboard than ever before,” 44 TTABVUE 261; “A **ride** that

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is so sweet under your feet,” *id.* at 292; and “Harshmellow™ dampens the specific target vibration for each product and works to create the smoothest **ride** imaginable.” *Id.* at 306 (emphasis added). Third parties also use “ride” to describe the act of being borne along on a snowboard, *see, e.g.*, the “Snowboarding Glossary” on REI’s website (44 TTABVUE 123-143, Exhibit 22), including definitions for:

Directional Stance: Stance on a snowboard that causes you to ride differently in one direction from the other.

Flail: To ride out of control.

Poach: To ride the park when it's closed or roped off.

Seven-Twenty (720) Air: The boarder goes forward to the wall, rotates 720° and lands riding switch. Or rides switch, rotates 720° in the air and lands riding forward.

Shred: To ride fast and stylishly.

Traverse: To ride diagonally or perpendicular to the fall line.

See also third-party use of “RIDE” as part of their marks in connection with snowboards. For example, a “snowboard gear buying guide” is put out by TheGoodRide.com:



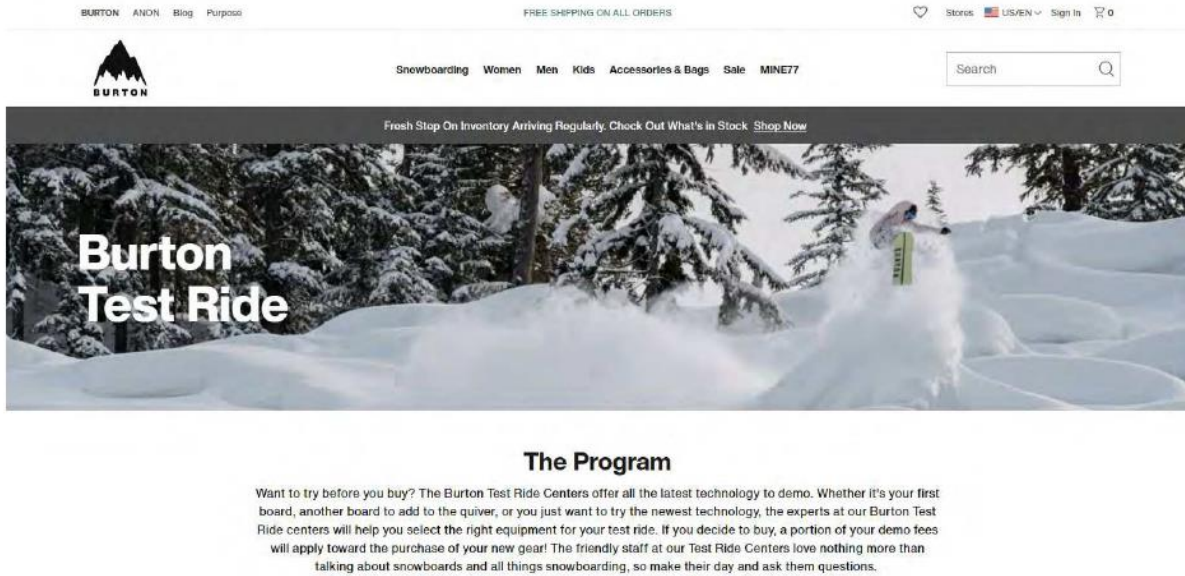
TheGoodRide.com is a snowboard gear buying guide

Geeking over snowboard gear, year over year. Objective and often collective reviews of snowboard gear.



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Exhibit 23, 44 TTABVUE 145, and a major competitor (Burton Snowboards⁹) uses “ride” to describe a program whereby potential buyers can test snowboards before they purchase:



The fine print reads in part:

Want to try before you buy? The Burton Test Ride Centers offer all the latest technology to demo. Whether it's your first board, another board to add to the quiver, or you just want to try the newest technology, the experts at our Burton Test Ride centers will help you select the right equipment for your test ride.

Exhibit 24, 44 TTABVUE 148.

Other companies use the term RIDE as part of their mark to sell related goods and services. For example, “Watch & Ride” offers courses in snowboarding (“Snowboard With Confidence”):

⁹ Burton Snowboards is described by crowsurvival.com in the online article “The 12 Best Snowboard Brands of 2023” as an industry giant. “If you ask any experienced snowboarder what the best brands are, you are more than likely going to see Burton on the number one spot.” 47 TTABVUE 231.

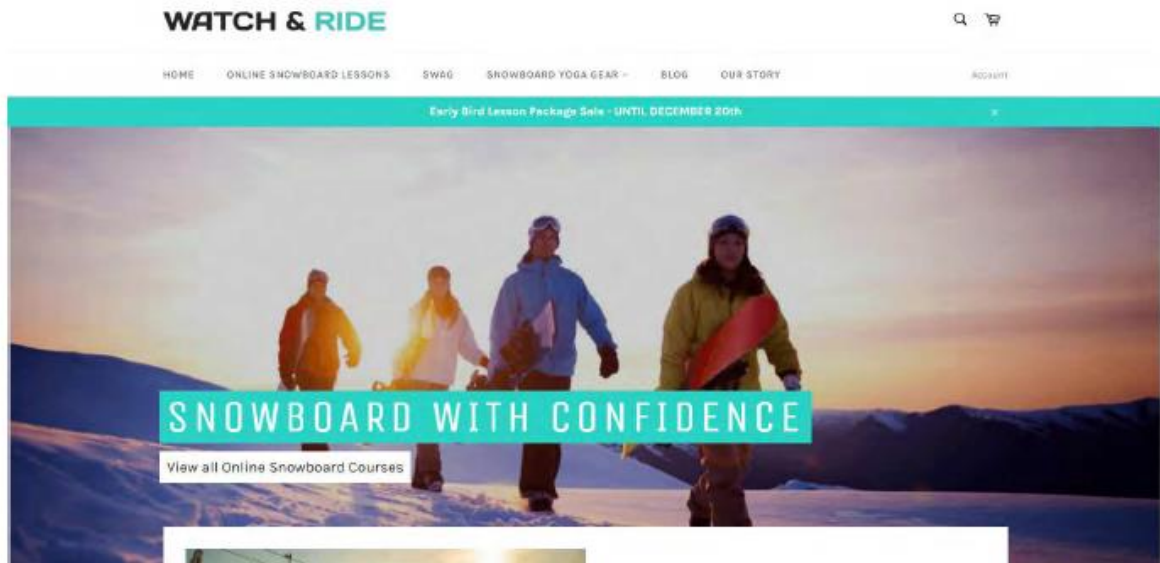


Exhibit 27, 44 TTABVUE 160. “Ride Easy” sells snowboard safety locks:

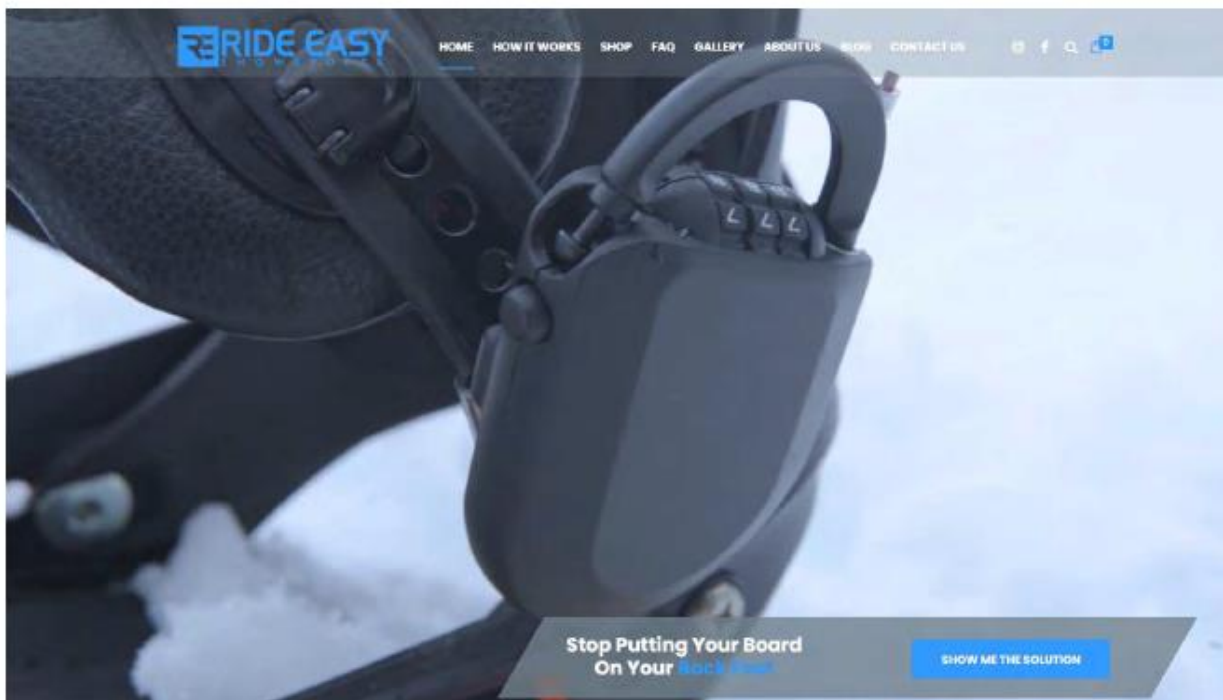


Exhibit 26, 44 TTABVUE 155. “Pro&Ride” (“Come Ride with the Pros”) offers snowboard camps:



Exhibit 25, 44 TTABVUE 153.

WhiteLines.com, an online publication that touts itself as “The Snowboarder’s Bible” reviewed the “Best Freeride Snowboards For 2021-2022 / Our Pick Of The Top Snowboards For The Steep And Deep This Winter,” using “freeride” as a descriptive term for type of snowboard:

Freeriding. The clue’s in the name. Rather than being confined by artificial boundaries, man-made features, a prescribed set of rules, or even a specific environment, snowboarding’s **freeride** fraternity prefer to venture into more uncharted territories on the mountain.

...

It shouldn’t take a particularly discerning eye to pick some of key differences between some models. Other features may be harder to spot. With that in mind, here are the key considerations to keep in mind when choosing your next **freeride** snowboard.

44 TTABVUE 200-01, Exhibit 31 (emphasis added).

On balance, we find that Opposer’s RIDE mark is entitled to no more than the normal scope of protection that is usually accorded an inherently distinctive mark that is highly suggestive. *See Joseph Phelps Vineyards*, 122 USPQ2d at 1734 (an

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opposer's mark's renown may “var[y] along a spectrum from very strong to very weak.”) (internal quotations omitted).

4. Similarity or Dissimilarity of the Marks – *DuPont* Factor One

The first *DuPont* factor addresses the “similarity or dissimilarity of the marks.” *DuPont*, 177 USPQ at 567. For this factor, we analyze “the marks in their entirety as to appearance, sound, connotation and commercial impression.” *In re Viterra*, 101 USPQ2d at 1908 (quoting *DuPont*, 177 USPQ at 567). 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 impression 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, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Stone Lion*, 110 USPQ2d at 1160; *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.”). Therefore, “[t]he focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.” *In re Assoc. of the U.S. Army*, 85 USPQ2d 1264, 1268 (TTAB 2007). In this case, the average purchaser is a snowboarder or snowboard enthusiast.

Applicant seeks to register the standard character mark JOYRIDE SNOWBOARDS. Opposer's mark is RIDE. The marks are similar in appearance and pronunciation because they share the term “ride.” However, Applicant's mark is four syllables while Opposer's mark is one; Applicant's mark includes the unique sound

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“joy,” which is absent from Opposer’s mark. The disclaimed term SNOWBOARDS further adds a slight measure of difference in the marks.

As for connotation, Applicant introduced into the record the following definitions from dictionary.com:¹⁰

RIDE - “to be borne along on or in a vehicle or other kind of conveyance,” “to move along in any way; be carried or supported,” and “to sit on and manage (a horse, bicycle, etc.) so as to be carried along.”

JOYRIDE – “a pleasure ride in an automobile, especially when the vehicle is driven recklessly or used without the owner’s permission,” “a brief, emotionally exciting interlude,” and “to go on a joyride.”

See Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc., 955 F.3d 994, 2020 USPQ2d 10341, at **4 (Fed. Cir. 2020) (finding Board’s reliance on dictionary definitions of the relevant terms in the marks and on the “marks themselves” to be substantial evidence on which to evaluate similarities in the connotation of each mark).

Opposer argues the marks convey similar meanings. “Both RIDE and JOYRIDE therefore suggest a journey, excursion, or conveyance, typically involving a vehicle.” 50 TTABVUE 20. Applicant counters: “At a minimum, the RIDE mark connotes the industry as a whole, whereas “joyride” has no specialized meaning within the relevant consuming public other than as a heritage snowboard brand and its common meaning to the general public, namely a brief, emotionally exciting interlude. ... Accordingly, from the perspective of the relevant consuming public (i.e.,

¹⁰ 44 TTABVUE 316, 324.

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snowboarders), Opposer's RIDE mark suggests snowboarding in general, and Applicant's JOYRIDE SNOWBOARDS mark suggests an emotionally exciting time while snowboarding." 51 TTABVUE 22.

We find that JOYRIDE and RIDE convey markedly different connotations and commercial impressions. We find, given the contrasting meanings of the words "ride" and "joyride," where the former has a meaning in the snowboard industry and the latter generally involves automobiles, along with the differences in sight and sound, that the marks are more dissimilar than similar. *Cf. Lever Bros. Co. v. The Barcolene Co.*, 463 F.2d 1107, 174 USPQ 392 (CCPA 1972) (additional word CLEAR in ALL CLEAR changes the meaning of the single word ALL); *see also In re P. Ferrero & C.S.p.A.*, 479 F.2d 1395, 178 USPQ 167 (CCPA 1973) (TIC TAC TOE creates a different impression than TIC TAC); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1127-28 (TTAB 2015) (finding identity in meaning outweighed difference between the marks in appearance and sound between marks MARZUL and BLUE SEA); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648-50 (TTAB 2008) (similarity in meaning outweighed differences in appearance and pronunciation where the goods were identical and applicant's mark LA PEREGRINA was an exact translation of cited mark PILGRIM); *In re Perez*, 21 USPQ2d 1075, 1077 (TTAB 1991) (EL GALLO for fresh vegetables likely to be confused with ROOSTER for fresh fruit, because "[w]hile the marks are concededly distinguishable in their appearance and sound, it is our view that the equivalency in meaning or connotation is sufficient, in this case, to find likelihood of confusion").

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The first *DuPont* factor weighs against likelihood of confusion.

5. Sophistication of Purchasers – *DuPont* Factor Four

The fourth *DuPont* factor considers the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs careful, sophisticated purchasing” *DuPont*, 177 USPQ at 567. Purchaser sophistication or a higher degree of care may tend to minimize likelihood of confusion *Palm Bay*, 73 USPQ2d at 1695. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect *Id.* “[T]he applicable standard of care is that of the least sophisticated consumer” *Stone Lion*, 110 USPQ2d at 1163 (affirming that Board properly considered all potential investors for recited services, including sophisticated investors as well as less sophisticated, individual investors).

Both parties’ target market has been, and remains, primarily composed of snowboarders. Linnberg Decl., 19 TTABVUE 5 (describing Opposer’s primary customer as an “avid snowboarder” aged 18-30); Taylor Decl., 45 TTABVUE 5 (“The snowboarding world... is still a relatively small community.”). This small community trends young, and the evidence of record shows that snowboards are advertised for hundreds of dollars, which may be considered expensive for the demographic, *see, e.g.*, Gnu Snowboards advertisement for a snowboard at \$599.99 (44 TTABVUE 328); EVO advertisement for a \$479.96 snowboard, and on the same page “similar items” (i.e. snowboards) ranging from \$399.96 to \$519.96 (44 TTABVUE 331), but there is no testimony to corroborate the accuracy of these figures as actual sales figures. We infer from the nature of the goods and their general price range some degree of care in purchasing.

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We find the conditions of sale slightly weigh against a finding of likelihood of confusion.

IV. Conclusion

We have carefully considered all of the evidence made of record, as well as the arguments related thereto. On this record, we find that the dissimilarities of the marks, in light of the conceptual weakness of Opposer's mark, the earlier 16-year period of co-existence of the marks JOYRIDE and RIDE for snowboards, and the degree of purchaser care involved, support a conclusion that confusion is unlikely despite the in-part identical and otherwise related nature of the goods, and the overlapping trade channels and classes of consumers. *Cf. Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 119 USPQ2d 1286, 1290 (Fed. Cir. 2016) (a single *DuPont* factor may be dispositive in a likelihood of confusion analysis, "especially when that single factor is the dissimilarity of the marks"); *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) (same); *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1144-45 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive").

Decision: The opposition under Trademark Act Section 2(d) is dismissed.