

This Opinion is Not a
Precedent of the TTAB

Mailed: January 7, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lofty Water LLC

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Serial No. 97043120

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Joseph R. Heffern of Rogers Counsel for Lofty Water LLC.

Alex Seong Keam, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Larkin, English, and Cohen,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Lofty Water LLC (“Applicant”) seeks registration on the Principal Register of the standard-character mark LOFTIWATER for goods ultimately identified as “Water beverages” in International Class 32.¹

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that

¹ Application Serial No. 97043120 was filed on September 24, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce. As discussed below, the application originally included additional beverages.

Applicant's mark so resembles the standard-character mark LOFTY, registered on the Principal Register for, among other goods, "coffee" and "tea" in International Class 30, and "fruit juices and fruit juice based drinks" in International Class 32,² as to be likely, when used in connection with the goods identified in the application, to cause confusion, to cause mistake, or to deceive.

Applicant appealed when the Examining Attorney made the refusal final. Applicant and the Examining Attorney have filed briefs.³ We affirm the refusal to register.⁴

² The cited Registration No. 5383281 issued on January 23, 2018 and has been maintained.

³ Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 WL 2853282, at *1 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. Applicant's brief appears at 4 TTABVUE and the Examining Attorney's brief appears at 10 TTABVUE. Attached to Applicant's brief at 10 TTABVUE 12-33 is what the Examining Attorney describes as copies of Applicant's and the registrant's website that are "duplicative of prior submissions." 10 TTABVUE 8 n.1. The Board strongly discourages the practice of resubmitting materials that are already in the record as attachments to briefs. *In re Michalko*, Ser. No. 85584271, 2014 WL 2531202, at *1 (TTAB 2014).

⁴ The citation form in this opinion is in a form provided in Section 101.03(a) of the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites the Westlaw legal database ("WL") and, in the initial full citation of a case, also identifies the number of the Board proceeding where it is available. The Board's decisions that have issued since 2008 are available in TTABVUE and many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB Reading Room by entering the same information. Practitioners should also adhere to the practice set forth in TBMP § 101.03(a).

I. Prosecution and Procedural History, and Record on Appeal⁵

We briefly summarize below the prosecution and procedural history of the application and appeal because it provides useful background for our disposition of the appeal.

Applicant originally applied to register LOFTIWATER for the following goods: “Energy drinks; Soft drinks; Fruit flavored soft drinks; Fruit-flavored beverages; Non-alcoholic beverages, namely, carbonated beverages; Sports drinks, namely, energy drinks; Water beverages.” Applicant alleged a bona fide intention to use the mark on all of the goods originally identified in the application.⁶

The Examining Attorney refused registration based on the cited registration of LOFTY. The Examining Attorney made of record USPTO electronic records regarding the cited registration,⁷ and third-party use-based registrations of marks for the goods identified in the application and in the cited registration,⁸ as well as third-party webpages offering for sale various goods identified in the application and in the cited registration.⁹

⁵ Citations in this opinion to the file history of the application are to the downloadable .pdf versions of the documents in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”). *See In re Seminole Tribe of Fla.*, Ser. No. 87890892, 2023 WL 3751113, at *1 n.1 (TTAB 2023).

⁶ September 24, 2021 Application at TSDR 2.

⁷ July 1, 2022 Office Action at TSDR 49-50.

⁸ *Id.* at TSDR 6-36. The Examining Attorney also made of record during prosecution some third-party use-based registrations that were subsequently cancelled. We have not considered them in our decision.

⁹ *Id.* at TSDR 37-48.

Applicant responded to the Office Action by deleting all of the goods identified in the original application except “water beverages,” submitting a purported specimen of use of its mark for “water beverages” consisting of pages from its website at loftiwater.com,¹⁰ and arguing against the Section 2(d) refusal. Applicant made of record pages from the website of the owner of the cited registration at loftycoffee.com,¹¹ and additional pages from Applicant’s website.¹²

The Examining Attorney then issued an Office Action accepting Applicant’s amendment to its identification of goods, but making final the Section 2(d) refusal. The Examining Attorney made of record additional USPTO electronic records regarding use-based third-party registrations of marks for the goods identified in the amended application and in the cited registration,¹³ and additional third-party webpages offering for sale various goods identified in the amended application and in the cited registration.¹⁴

Applicant appealed to the Board. 1 TTABVUE. After Applicant filed its appeal brief, the Examining Attorney requested a remand of the application “to address an issue missed during examination,” specifically, the fact that Applicant had purported to amend the filing basis of its application from intent to use under Section 1(b) to use in commerce under Section 1(a) through the submission of a specimen and

¹⁰ December 27, 2022 Response to Office Action at TSDR 15-26.

¹¹ *Id.* at TSDR 27-31, 37-45.

¹² *Id.* at TSDR 32-36, 47-57.

¹³ March 21, 2023 Final Office Action at TSDR 7-47.

¹⁴ *Id.* at TSDR 48-99.

claimed dates of use. 6 TTABVUE 1. The Examining Attorney requested remand of the application “to deny the amendment to Section 1(a) without filing an acceptable allegation of use.” *Id.*

The Board granted the Examining Attorney’s request and remanded the application to the Examining Attorney. 7 TTABVUE 1. The Examining Attorney issued a Continuation of Final Office Action, in which the Examining Attorney continued the Section 2(d) refusal and stated that the application would proceed with a Section 1(b) filing basis.¹⁵

The Board resumed the appeal and gave Applicant 60 days from the date of the resumption order to file a supplemental brief, 8 TTABVUE 1, but Applicant did not do so. The Examining Attorney subsequently filed a brief, and the appeal is now ready for decision.

II. Analysis of Likelihood of Confusion Refusal

“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 of the likelihood of confusion under Section 2(d) of the Trademark Act 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, 1361 (CCPA 1973) (“*DuPont*”). *Charger Ventures*, 64 F.4th at 1379. We consider each

¹⁵ April 17, 2024 Continuation of Final Office Action at TSDR 1.

DuPont factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the [goods or] services.” *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 WL 417620, at *6 (TTAB 2023) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)), *civ. action filed*, No. 5:23-cv-00549-GW-PVC (C.D. Cal. Mar. 28, 2023). Applicant lists six *DuPont* factors in its brief, 4 TTABVUE 6, but focuses solely on the first factor, *id.* at 6-9, and the second factor. *Id.* at 9-10.¹⁶

A. Similarity or Dissimilarity of the Marks

“Under the first *DuPont* factor, we consider “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *Iron Balls Int’l Ltd. v. Bull Creek Brewing, LLC*, Canc. No. 92079099, 2024 WL 2844425, at *11 (TTAB 2024) (quoting *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, Opp. No. 91270181, 2024 WL 1638376, at *5 (TTAB 2024) (quotation and quotation marks omitted).

¹⁶ Because Applicant offers no argument and evidence on the other four listed factors, we need not consider them. *Cf. Heil Co. v. Tripleye GmbH*, Opp. No. 91277359, 2024 WL 4925901, at *37 (TTAB 2024) (holding that the Board did not need to consider four *DuPont* factors where the parties presented no evidence regarding them).

As Applicant acknowledges, 4 TTABVUE 6, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *Sage Therapeutics*, 2024 WL 1638376, at *5 (quoting *Coach Servs. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)). “The focus is on the recollection of the average purchaser, who normally ‘retains a general rather than a specific impression of marks.’” *Id.* (quoting *In re i.am.symbolic, llc*, Ser. No. 85916778, 2018 WL 3993582, at *4 (TTAB 2018)). The average purchaser here is a consumer of “water beverages,” which necessarily includes the vast majority of, if not all of, the general public.

Applicant correctly argues that the LOFTY and LOFTIWATER marks must be considered in their entireties, 4 TTABVUE 7-8, and accuses the Examining Attorney of ignoring the “-WATER” suffix in its mark in comparing the marks in their entireties, *id.* at 8-9, and failing to “account for how the latter half of the mark would affect the likelihood of confusion analysis.” *Id.* at 8. According to Applicant, “the Examining Attorney improperly dissected the Applicant’s Mark [and] solely focused on the first two syllables of the LOFTIWATER mark in comparing it to the Registrant’s LOFTY mark,” *id.* at 8-9, and “improperly split the Applicant’s unified LOFTIWATER mark into two portions and then failed to analyze how the latter ‘-WATER’ half of the mark would affect the likelihood of confusion analysis.” *Id.* at 9.

The Examining Attorney responds that “LOFTI and LOFTY are phonetic equivalents and thus sound similar,” 10 TTABVUE 3, and argues that “the addition

of a term to a registered mark has often been found to increase the similarity between the compared marks where, as in the present case, the dominant portion of the marks is the same.” *Id.* (citations omitted). The Examining Attorney further argues that Applicant’s mark “adds the generic wording WATER, which does not change the commercial impression of the marks,” *id.*, and that “LOFTIWATER and LOFTY convey the same idea and stimulate the same mental reaction.” *Id.* at 4. The Examining Attorney concludes that “LOFTIWATER and LOFTY are sufficiently similar to cause consumer confusion or mistake as to the source of the goods.” *Id.* at 5.

The LOFTY and LOFTIWATER marks must be considered in their entireties, but “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

There is no question that the prefix LOFTI- is the dominant portion of Applicant’s compound mark LOFTIWATER. The suffix -WATER is the generic name of the goods, and the prefix LOFTI- is thus the sole source-identifying portion of the mark. *See Detroit Athletic Co.*, 903 F.3d at 1303-04. In the required comparison of the marks in their entireties, we will give greater weight to the source-identifying word LOFTI in Applicant’s mark than to the generic name WATER.

It is self-evident that the marks are similar in appearance, sound, and connotation and commercial impression when considered in their entireties. The cited mark is the word LOFTY alone. A consumer with a general rather than specific impression of that mark for various beverages who separately encounters Applicant's mark LOFTIWATER for water beverages will first see and hear the word LOFTI, which is the phonetic equivalent of the word LOFTY that appears both as the cited mark as a whole and in Applicant's own trade name "Lofty Water LLC." The consumer will then see and hear the generic suffix -WATER. LOFTI, the dominant lead-off portion of Applicant's mark, looks very similar to LOFTY, sounds identical to "LOFTY" when verbalized,¹⁷ and has the same general laudatory connotation of being elevated, particularly in quality.¹⁸

Applicant places undue weight on the significance of the generic word WATER in its mark. By definition, in the compound LOFTIWATER mark, the suffix -WATER simply names the goods originating from the source identified as LOFTI-. Especially against the backdrop of a record that shows no third-party registrations or uses of LOFTY- or LOFTI- formative marks for any beverages, a consumer with a general impression of the cited LOFTY mark for beverages such as coffee, tea, and fruit juices

¹⁷ Applicant argues that its mark is two words of four syllables, while the cited mark is one word of two syllables, 4 TTABVUE 8, but the Board has long noted that consumers do not focus on such minutia in forming impressions of marks. See *In re John Scarne Games, Inc.*, 1959 WL 5901, at *1 (TTAB 1959) ("Purchasers . . . do not engage in trademark syllable counting-they are governed by general impressions made by appearance or sound, or both").

¹⁸ "The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions." *Monster Energy*, 2023 WL 417620, at *10 n.41. We take judicial notice that the meaning of "lofty" includes "exalted in rank, dignity, or characters; eminent." DICTIONARY.COM (last accessed on January 6, 2025).

who separately encounters Applicant's mark LOFTIWATER for water beverages could understand the LOFTIWATER mark to reflect the registrant's line extension from other beverages into the most elemental of beverages, water.

The similarity of marks "is not a binary factor but is a matter of degree," *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003)), and the LOFTY and LOFTIWATER marks are far more similar than dissimilar in each means of comparison when considered in their entirety. The first *DuPont* factor strongly supports a conclusion that confusion is likely. See *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024).

B. Similarity or Dissimilarity of the Goods

"The second *DuPont* factor considers the similarity or dissimilarity and nature of the goods as described in the involved application and cited registration," *In re Samsung Display Co.*, Ser. No. 90502617, 2024 WL 3451873, at *3 (TTAB 2024) (citing *DuPont*, 476 F.2d at 1361), and "contemplates whether the consuming public may perceive the respective goods as related enough to cause confusion about their source or origin." *Id.* (citing *Naterra*, 92 F.4th at 1117 (quoting *St. Helena Hosp.*, 774 F.3d at 752 (cleaned up) (internal citation omitted))).

"The goods need not be identical or even competitive to find a likelihood of confusion." *Id.* (citing *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000)). "They need only be 'related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods]

emanate from the same source.” *Id.* (quoting *Coach Servs.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, Opp.No. 91117739, 2007 WL 1431084, at *10 (TTAB 2007)).

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. . . .

In re OSF Healthcare Sys., Ser. No. 88706809, 2023 WL 6140427, at *4 (TTAB 2023) (quotations, quotation marks, and citations omitted).

“We begin with the identifications of . . . [goods] in the registration and application under consideration.” *Id.* at *5 (citation omitted). The identification of goods in the application is “water beverages,”¹⁹ while the relevant portion of the identification of goods in the cited registration includes “coffee,” “tea,” “fruit juices,” and “fruit juice based drinks.” “[W]e must construe the [goods] identified in the cited registration as broadly as reasonably possible ‘to include all [goods] of the nature and type described therein,’” *id.* (quoting *In re Solid State Design, Inc.*, Ser. No. 87269041, 2018 WL 287909, at *6 (TTAB 2018) (internal quotation omitted)), and “we must resolve any ambiguities regarding their coverage in favor of the cited registrant ‘given the presumptions afforded the registration under Section 7(b)’ of the Trademark Act.” *Id.* (quoting *In re C.H. Hanson Co.*, Ser. No. 77983232, 2015 WL 6121759, at *5 (TTAB

¹⁹ As discussed above, the identification of goods in Applicant’s application was originally far more extensive, indicating that Applicant itself intended to sell a variety of beverages in addition to water, including “fruit flavored beverages.”

2015) (citing 15 U.S.C. § 1057(b)). We must also “give the [goods] identified in the application their full scope in our analysis of the second *DuPont* factor.” *Id.* (citation omitted).

Applicant argues that it only sells “water beverages,” while the cited registrant uses its LOFTY mark only for coffee, tea, and fruit juices. 4 TTABVue 9. Applicant further argues that its water beverages are sold only through the Internet directly to consumers, while the goods sold under the cited mark appear “only to be used in connection with the shipping of ground coffee and dried tea in interstate commerce directly to consumers” and the registrant’s coffee, tea, and fruit juices “appear to be limited solely to retail sales through the Registrant’s physical cafes, located exclusively in California.” *Id.* at 10. Applicant concludes that “because the trade channels and target market of the Applicant’s and Registrant’s very different products are also dissimilar, there [sic] it is highly unlikely that customers will confuse the Applicant’s LOFTIWATER Mark with the Registrant’s LOFTY mark, which is primarily used for retail sales of coffee, tea and fruit juices.” *Id.*

This argument refers to the third *DuPont* factor, the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361. “Because the relevant goods in the cited registration are unrestricted as to trade channels and classes of purchasers, we must presume that they travel in the ordinary trade and distribution channels for the goods and to all usual classes of consumers,” *Samsung Display*, 2024 WL 3451873, at *8 (citations omitted), and “[j]ust as we could not read a limitation into Applicant’s identification, we cannot read such a limitation into the

unrestricted identification of the registration by resorting to extrinsic evidence; we must rely on the identification alone.” *Id.* Even if the registrant’s current actual channels of trade are geographically or otherwise limited, the registrant’s “registration is geographically unrestricted” and “creates a presumption that the registrant has the exclusive right to use its mark throughout the United States,” *Iron Balls*, 2024 WL 2844425, at *24 (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1568 (Fed. Cir. 1983) (citing 15 U.S.C. § 1057(b)), and Applicant’s pending application “is also unrestricted, geographically or otherwise” and if it matured into a registration, Applicant could presumptively sell throughout the United States, including in California. *Id.* Because Applicant did not offer evidence regarding the channels of trade and classes of purchasers that flow from the identifications of goods in the cited registration and in the application, we need not address this passing argument further.

Turning back to the second *DuPont* factor, the Examining Attorney argues that

evidence from the USPTO’s X-Search database consisting of a number of third-party marks registered for use in connection with the same or similar goods as those of both applicant and registrant in this case shows that the goods listed therein are of a kind that may emanate from a single source under a single mark.

10 TTABVUE 5-6 (citations omitted).

“As a general proposition, third-party registrations that cover goods . . . from both the cited registration and an Applicant’s application are relevant to show that the goods . . . are of a type that may emanate from a single source under one mark.” *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at *5 (TTAB 2019)

(citations omitted). We describe below the subsisting use-based third-party registrations in the record that cover both the “water beverages” identified in the application (or one or more types of “water beverages” encompassed within the full scope of that identification) and the “fruit juices” identified in the cited registration (or an equivalent after construing the identification as broadly as reasonably possible):²⁰

- Registration No. 5726890, which covers “drinking water” and “fruit juices;”²¹
- Registration No. 5777292, which covers “bottled drinking water” and “fruit juices;”²²
- Registration No. 5716227, which covers “water beverages” and “fruit juices;”²³
- Registration No. 4689271, which covers “drinking waters” and “fruit juices;”²⁴
- Registration No. 4732129, which covers “bottled drinking water” and “fruit juices;”²⁵
- Registration No. 3861510, which covers “bottled water” and “fruit juices;”²⁶
- Registration No. 6651255, which covers “water beverages” and “fruit juices;”²⁷

²⁰ “Just as we must consider the full scope of the goods and services as set forth in the application and registration under consideration, we must consider the full scope of the goods and services described in a third-party registration.” *Country Oven*, 2019 WL 6170483, at *5. A number of the identifications of goods in these registrations also cover additional beverages identified in the cited registration.

²¹ July 1, 2022 Office Action at TSDR 6-8.

²² *Id.* at TSDR 13-14.

²³ *Id.* at TSDR 17-18.

²⁴ *Id.* at TSDR 27-28.

²⁵ *Id.* at TSDR 29-30.

²⁶ *Id.* at TSDR 35-36.

²⁷ March 23, 2023 Final Office Action at TSDR 11-12.

- Registration No. 6634520, which covers “drinking water” and “fruit juice beverages;”²⁸
- Registration No. 6301075, which covers “water beverages” and “fruit juice;”²⁹
- Registration No. 6333562, which covers “mineral water” and “sparkling water,” and “fruit juice;”³⁰
- Registration No. 6828314, which covers “bottled water” and “fruit juices;”³¹
- Registration No. 6022110, which covers “water beverages” and “fruit juices;”³²
- Registration No. 6739910, which covers “bottled water, flavored” and “fruit juice;”³³
- Registration No. 6521283, which covers “aerated water” and “fresh fruit juices;”³⁴
- Registration No. 5980990, which covers “drinking water” and “fruit juice;”³⁵
- Registration No. 6201668, which covers “water beverages” and “fruit juice;”³⁶
- Registration No. 6004028, which covers “water” and “fruit juices;”³⁷ and
- Registration No. 5946245, which covers “drinking water” and “fruit juice beverages.”³⁸

²⁸ *Id.* at TSDR 13-14.

²⁹ *Id.* at TSDR 17-18.

³⁰ *Id.* at TSDR 23-24.

³¹ *Id.* at TSDR 25-26.

³² *Id.* at TSDR 31-32.

³³ *Id.* at TSDR 33-34.

³⁴ *Id.* at TSDR 37-39.

³⁵ *Id.* at TSDR 40-41.

³⁶ *Id.* at TSDR 42-43.

³⁷ *Id.* at TSDR 44-45.

³⁸ *Id.* at TSDR 46-47.

These 18 third-party use-based registrations, owned by 16 different entities, “are sufficient in both quality and quantity to provide a reasonable predicate supporting the Examining Attorney’s position on relatedness and shift the burden to Applicant to rebut the evidence with competent evidence of its own.” *Country Oven*, 2019 WL 6170483, at *5. Applicant did not carry that burden with any “competent evidence of its own,” and we find that the second *DuPont* factor supports a conclusion that confusion is likely.

C. Summary

The key two first *DuPont* factors both support a conclusion that confusion is likely. The LOFTY and LOFTIWATER marks are far more similar than dissimilar in appearance, sound, and connotation and commercial impression when considered in their entirety, and the record shows that the “water beverages” identified in the application often emanate from the same source as the “fruit juices” identified in the cited registration. We find, on the basis of the record as a whole, that a consumer with a general impression of the cited LOFTY mark for fruit juices and other beverages who separately encounters the LOFTIWATER mark for water beverages is likely to believe mistakenly that the goods have a common source.

Decision: The refusal to register is affirmed.