

This Opinion is not a
Precedent of the TTAB

Mailed: January 24, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Life At Home US Corp.

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Serial No. 97268381

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Tuvia Rotberg of Tarter Krinsky & Drogin LLP
for In re Life At Home US Corp.

Maureen Dall Lott, Trademark Examining Attorney, Law Office 105,
Jennifer L. Williston, Managing Attorney.

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NOTICE OF CORRECTION

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By the Board

On January 24, 2025, the Board issued a decision (“the Decision”) in an ex parte appeal (Serial No. 97268381) affirming the Trademark Examining Attorney.

The Decision erroneously identified the Trademark Examining Attorney as Jennifer Williston and the Managing Attorney as Maureen Dall Lott. This corrected Decision now correctly identifies Maureen Dall Lot as the Trademark Examining Attorney and Jennifer Williston as the Managing Attorney.

These corrections are non-substantive and do not affect the Decision. The period for filing any appeal continues to run from the date of the original Decision. A copy of the corrected Decision is attached.

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Before Lykos, Goodman and Myles,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Life At Home US Corp. (“Applicant”) seeks registration on the Principal Register of the mark LAH KITCHEN (in standard characters, KITCHEN disclaimed) for the following goods in International Class 8:

Pizza cutters, non-electric; Spreader in the nature of a small knife for butter or cheese; Table cutlery; Butter knives; Fruit knives; Kitchen knives; Non-electric can openers; Non-electric garlic choppers.¹

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¹ Application Serial No. 97268381 was filed on February 15, 2022, based upon Applicant’s assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

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 Applicant's mark so resembles the following Principal Register mark LAH. WARM (in standard characters) for the following goods in International Class 24:

Drapery; Quilts; Baby blankets; Bath linen, except clothing; Bed linen; Lap blankets; Mattress covers; Pet blankets; Pillow covers; Shower curtains of textile or plastic; Sleeping bags; Table cloth of textile; Tablecloths, not of paper; Textile fabrics for home and commercial interiors; Textile place mats; Textile wall hangings; Towels; Unfitted fabric furniture covers; Upholstery fabrics; Woollen blankets.²

When the refusal was made final, Applicant appealed and requested reconsideration.³ After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Page references to the application record are to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 6 TTABVUE; the Examining Attorney's brief is at 8 TTABVUE. The citation form in this decision is in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). For decisions of the Board, this order employs citation to the Lexis database.

² Registration No. 6417032, registered on July 13, 2021. The mark appears on the drawing page as "LAH. Warm". However, the presentation of the mark on the drawing page does not change the nature of the mark from a standard character mark to a special form mark. *See* Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a) (setting forth requirements for standard character mark). Our references to Applicant's mark in this opinion in all uppercase letters reflects the fact that a term registered as a mark in standard character format is not limited to any particular font style, size, or color. *See In re White Rock Distilleries Inc.*, 2009 TTAB LEXIS 601, at *5 (TTAB 2009) ("rights associated with a word mark in standard character (or typed) form reside in the wording and not in any particular display of the word.").

³ The application was inadvertently abandoned. Applicant filed a petition to revive, request for reconsideration, and appeal on February 20, 2024. The application was revived on March 27, 2024.

I. Likelihood of Confusion

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, or to cause mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We consider each *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 re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. See *In re i.am.symbolic, LLC*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and others, are discussed below.

A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial

impression. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at *4 (TTAB 2014) (citations omitted).

While the marks must be considered in their entirety, including any disclaimed matter, it is nevertheless appropriate, for rational reasons, to regard certain features of the marks as being more dominant or otherwise significant, and therefore to give those features greater weight. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1322 (Fed. Cir. 2014); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985). Disclaimed or otherwise descriptive matter is generally viewed as a less dominant or significant feature of a mark. *See In re Nat'l Data Corp.*, 753 F.2d at 1058, 1060.

Marks “must be considered . . . in light of the fallibility of human memory’ and ‘not on the basis of side-by-side comparison,” *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 685 (CCPA 1977)), and we must bear in mind that some consumers “may have but dim recollections from having previously seen or heard one or the other of the involved marks.” *Neutrogena Corp. v. Bristol-Myers Co.*, 410 F.2d 1391, 1393 (CCPA 1977).

Applicant’s mark is LAH KITCHEN and Registrant’s mark is LAH.WARM.

Applicant submits that the marks do not look or sound similar because they have different second terms and Registrant’s mark includes a period. 6 TTABVUE 4.

Applicant argues that the marks have “sharp differences in meaning” because of each mark’s different second terms and the different identified goods. 6 TTABVUE 5. Applicant submits that the marks have different commercial impressions because Applicant’s mark “conveys a focus on KITCHEN and kitchen-related products” while Registrant’s mark “conveys WARMTH” and is set apart from the term LAH by the period which creates a “visual and grammatical break.” 6 TTABVUE 6.

Although Applicant argues that the focus should be on the second terms in each mark, WARM and KITCHEN (6 TTABVUE 5), the dominant portion of Applicant’s mark is the arbitrary term LAH because the term KITCHEN in Applicant’s mark has been disclaimed. *See Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 1351 (Fed. Cir. 2011) (“when a mark consists of two or more words, some of which are disclaimed, the word not disclaimed is generally regarded as the dominant or critical term”) (citing *In re Dixie Rests.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997)). As to Registrant’s mark, the term WARM is suggestive of Registrant’s blankets, quilts and sleeping bags, making LAH the more arbitrary and dominant term. *See In re M. Serman & Co.*, 1984 TTAB LEXIS 74, at *2-3 (TTAB 1984) (CITY found as more arbitrary and dominant for the marks CITY GIRL and CITY WOMAN, where the second term of each designation is highly suggestive, perhaps even descriptive of women’s apparel). The addition of a period in Registrant’s mark, like other punctuation marks, is a minor difference that does not serve to distinguish the marks. *Peterson v. Awshucks SC, LLC, Peterson v. Awshucks SC, LLC*, 2020 TTAB LEXIS

520, at *5 (TTAB 2020) (citing TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 807.14(c)).

LAH KITCHEN and LAH. WARM are similar in appearance, sound, meaning and commercial impression in that they contain the identical arbitrary term LAH. *Palm Bay Imps.*, 396 F.3d at 1372-73. LAH, as the first word in each mark, is likely to be noticed and remembered by consumers. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (finding “[t]he identity of the marks’ initial two words is particularly significant because consumers typically notice those words first”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876 (Fed. Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because “consumers must first notice th[e] identical lead word”).

Although we acknowledge that the marks in their entireties have obvious differences in appearance and pronunciation due to the inclusion of the other wording, these differences are not as significant as the similarities in sound, appearance, and meaning created by the identical common shared term LAH. The disclaimed term in Applicant’s mark and the suggestive terms and punctuation in Registrant’s mark have less source indicating significance, and these differences do not rise to the level of changing the overall commercial impression of the marks LAH KITCHEN and LAH. WARM.

So while we do not ignore the differences in Applicant’s and Registrant’s marks, we must keep in mind that consumers have imperfect memories. Consumers familiar with either mark are likely to retain the arbitrary lead term LAH in their minds and,

upon encountering the other mark with the same dominant term, will be influenced by this similarity. *See Morton-Norwich Prods., Inc. v. S.C. Johnson & Son, Inc.*, 531 F.2d 561, 562 (CCPA 1976) (holding that RAINFRESH is confusingly similar to RAIN BARREL given the close relationship of the goods and “similarity of commercial impressions”); *In re Denisi*, 1985 TTAB LEXIS 107, at *2 (TTAB 1985) (“[I]f the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences.”); *In re Am. Beauty Prods. Co., Inc.*, 1984 TTAB LEXIS 62, at *2 & 4 (TTAB 1984) (REJUVA CURL and REJUVA NAIL confusingly similar, with REJUVA the dominant feature in terms of source indicating impact).

We find the differences in the marks are outweighed by the similarity in commercial impression. The first *DuPont* factor weighs in favor of likelihood of confusion.

B. Similarity or Dissimilarity of the Goods and Services

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods as described in an application or registration.”⁴ *DuPont*, 476 F.2d at 1361.

In determining the similarity or dissimilarity of the goods, we must focus on the goods as they are identified in the involved application and cited registration. *See In re i.am.symbolic, llc*, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*,

⁴ Applicant did not address the relatedness of the goods in its brief. We do not construe this as a concession or admission because the Examining Attorney bears the burden of establishing likelihood of confusion.

281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990).

It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

The goods need not be identical or even competitive to find a likelihood of confusion. *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 they emanate from the same source.” *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 2007 TTAB LEXIS 58, at *28-29 (TTAB 2007)).

Evidence of relatedness might include news articles and/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; and/or copies of prior use-based registrations of the same mark for both an applicant’s goods (or similar goods) and the goods listed in the cited registration (or similar goods). *See, e.g., In re Davia*, 2014 TTAB LEXIS 214, at *19 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus

consumers were likely to purchase the products at the same time and in the same stores).

The Examining Attorney submitted third-party registrations to show relatedness. November 10, 2022 Office Action, at TSDR pp. 3-14. Third-party registrations that individually cover different goods and are based on use in commerce serve to suggest that the listed goods are of a type that may emanate from a single source. *See Mucky Duck Mustard Co.*, 1988 TTAB LEXIS 11, at *9 n.6 (TTAB 1988) (although third-party registrations are “not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, [they] may nonetheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source”). *See also In re Albert Trostel & Sons Co.*, 1993 TTAB LEXIS 36, at *7-8 (TTAB 1993).

Relevant third-party registrations include the following:

Registration No. 6747110 for KEY LIME LEXI for goods that include table cutlery, namely, knives; chef knives; non-electric can openers; non-electric pizza cutter; table linens and tea towels⁵ (November 10, 2022 Office action, TSDR pp. 29-30).

Registration No. 6666808 for SUR LA TABLE for kitchen goods that include tableware utensils, namely, spoons, forks, and knives; table linen, not of paper; kitchen towels of cloth and textiles⁶ (November 10, 2022 Office action, TSDR pp. 17-18).

Registration No. 6894677 for OPAL INNOCENCE for goods that include flatware⁷, namely, forks, knives, and spoons; tablecloths of textile; place mats of textile (November 10, 2022 Office action, TSDR pp. 19-20).

⁵ Registrant’s “towels” is broad enough to include tea towels.

⁶ Registrant’s “towels” is broad enough to include kitchen towels.

⁷ Table cutlery and flatware are synonymous.

Registration No. 5930533 for HEATH for goods that include flatware, namely, forks, knives, and spoons; kitchen knives; tea towels; place mats of textile; table linens of textile (November 10, 2022 Office action, TSDR pp. 25-26).

Registration No. 6634325 for MADE BY US, MADE WITH YOU for goods that include flatware, namely, forks, knives, and spoon, kitchen knives; place mats of textile material; towels, including tea and kitchen towels; (November 10, 2022 Office action, TSDR pp. 27- 28).

Registration No. 6761572 for BRAVA! for goods that include plastic flatware⁸ namely, knives, forks, and spoons; tablecloths, not of paper (November 10, 2022 Office action, TSDR pp. 15-16).

Registration No. 6849630 for BLUE PHEASANT for goods that include flatware being knives; table linens not of paper, textile tablecloths, and textile place mats (November 10, 2022 Office action, TSDR pp. 11-12).

Registration No. 6787877 for A SOUTHERN SIDEBOARD for goods including spreader in the nature of a small knife for butter or cheese; bread knives; serving knives; table linen of textile; table linen, not of paper; table mats of textile; (November 10, 2022 Office action, TSDR pp. 21-22).

Evidence that “a single company sells the goods ... of both parties, if presented, is relevant to a relatedness analysis.” *Hewlett-Packard Co.*, 281 F.3d at 1267; *see also In re Embiid*, 2021 TTAB LEXIS 168, at *39 (TTAB 2021) (evidence of third-parties offering goods of both applicant and registrant pertinent to relatedness of the goods).

The Examining Attorney also submitted internet evidence to show that “many entities provide a variety of items for dining and food preparation, which are similar to both applicant's goods and registrant’s goods.” 8 TTABVUE 6. However, most of the internet webpage evidence does not show the offering of Applicant’s and

⁸ Table cutlery (i.e., flatware) is broad enough to include plastic flatware.

Registrant's goods under the same mark so we find this evidence goes more to trade channels, which we discuss below.⁹

We find that based on the third-party registrations, Applicant's table cutlery, butter knives and kitchen knives are related to Registrant's tablecloths not of paper, textile place mats, and towels.

The in-part relatedness of the goods weighs in favor of likelihood of confusion.

C. Similarity or Dissimilarity of Trade Channels and Classes of Consumers

The third *DuPont* factor considers "the similarity or dissimilarity of established, likely-to-continue trade channels."¹⁰ *Dupont*, 476 F.2d at 1361.

With regard to the channels of trade and classes of consumers, we must make our determinations under these factors based on the goods as they are identified in the application and cited registration. *Stone Lion Cap. Partners*, 746 F.3d at 1323.

Here, both Applicant's and Registrant's identifications are unrestricted as to trade channels and classes of consumers. In the absence of specific limitations in Applicant's and Registrant's respective identifications, we must assume that the products set forth in the identifications are sold in all normal channels of trade for goods of that type. *DeVivo v. Ortiz*, 2020 TTAB LEXIS 15, at *40 (TTAB 2020).

⁹ The goods on these webpages show retailers carrying third-party products offered under third-party marks, or unbranded products, or offered under a different mark (product line) rather than the retailer's mark. Additionally, some of the internet webpage evidence does not show the retailer offering the goods of both Applicant or Registrant, or contains non-relevant goods. We do not find this evidence probative. There was only one example showing the goods under the same retailer mark: Sur La Table – offering Sur La Table placemat and Sur La Table butter knife and Sur La Table corn knife.

¹⁰ Applicant did not address trade channels in its brief. As indicated in note 4, we do not construe this as a concession or admission.

("[A]bsent an explicit restriction in the application, the identified goods in the application must be presumed to move in all channels of trade that would be normal for such goods and to all usual prospective purchasers for goods of that type."). Due to the lack of limitations in each identification, the classes of consumers overlap to include members of the general public seeking Applicant's table cutlery, butter knives and kitchen knives and Registrant's tablecloths not of paper, textile place mats and towels.

The internet webpages submitted by the Examining Attorney show that specialty retailers (e.g., William Sonoma, Sur la Table, Zara Home, Public Goods) sell table cutlery, kitchen knives, table linens not of paper and textile place mats on their websites, although the various categories of goods are sold on different subpages rather than the same webpages. We find this evidence supports a finding that, as to at least some of Applicant's and Registrant's identified goods, they are offered in at least one common channel of trade—that is—the websites operated by the third-party specialty retailers.

Because there is at least some overlap in the channels of trade and classes of consumers, this *DuPont* factor weighs in favor of likelihood of confusion.

II. Conclusion

We find the first, second and third DuPont factors weigh in favor of a likelihood of confusion in that the marks are similar, the goods are related in part and the trade channels overlap at least in part. Given these similarities, a likelihood of confusion exists.

Decision: The refusal to register Applicant's mark LAH KITCHEN under Section 2(d) is affirmed.