

This Opinion is Not a
Precedent of the TTAB

Mailed: December 23, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Dictador Holding Limited

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Serial No. 97349113

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Max Moskowitz of Ostrolenk Faber LLP for Dictador Holding Limited.

April Hesik, Trademark Examining Attorney, Law Office 124,
Lydia Belzer, Managing Attorney.

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Before Zervas, Larkin, and Bradley,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Dictador Holding Limited (“Applicant”) seeks registration on the Principal Register of the standard-character mark DICTADOR ARTHOUSE SPIRITS (SPIRITS disclaimed) for goods ultimately identified in International Class 33 as:

Alcoholic punches; Alcoholic essences; Pre-mixed alcoholic beverages, other than beer and wine; Alcoholic beverages, except beer and wine; Alcoholic preparations for making alcoholic beverages, except beer and wine; Whisky; Brandy; Liqueurs; Schnapps; Gin; Cider, namely, dry cider, hard cider; Rum; Low alcoholic drinks, except beer and wine; Alcoholic Cocktails; Aperitifs; Vodka; Absinthe; Alcoholic carbonated beverages, except beer and wine; Alcoholic Bitters; Hydromel; Distilled alcoholic beverages; Fruit

extracts, alcoholic; Cooking brandy; Extracts of spiritous liquors; Cherry brandy; Malt whisky; Flavored tonic liquors; Fermented spirit; Rum infused with vitamins; Sugar cane juice rum; Potable spirits; Ginseng liquor.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 Applicant's mark so resembles the standard-character mark ART HOUSE, registered on the Principal Register for "wine" in International Class 33,² as to be likely, when used in connection with the goods identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney have filed briefs.³ We affirm the refusal to register.⁴

¹ Application Serial No. 97349113 was filed on April 6, 2022 under Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d), based on Applicant's pending European Union application.

² The cited Registration No. 4813987 issued on September 15, 2015 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 7 TTABVUE and the Examining Attorney's brief appears at 9 TTABVUE.

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 History and Record on Appeal⁵

We briefly summarize below the prosecution history of Applicant's application because it provides useful background to our disposition of the appeal.

Applicant originally applied to register its mark for goods identified as:

Spirits; Alcoholic punches; Alcoholic essences; Pre-mixed alcoholic beverages; Alcoholic jellies; Preparations for making alcoholic beverages; Alcoholic beverages (except beer); Alcoholic preparations for making beverages; Whisky; Brandy; Liqueurs' Schnapps; Gin; Cider; Rum; Low alcoholic drinks; Cocktails; Aperitifs; Vodka; Absinthe; Alcoholic carbonated beverages, except beers; Bitters; Hydromel; Extracts of spiritous liquors; Cherry brandy; Malt whisky; Flavored tonic liquors; Fermented spirit; Rum infused with vitamins; Sugar cane juice rum; Potable spirits; Ginseng liquor.

The Examining Attorney issued an Office Action refusing registration under Section 2(d) based on the cited registration of ART HOUSE, and requiring amendments to Applicant's identification of goods, a disclaimer of "SPIRITS," and a translation of "DICTADOR."⁶ The Examining Attorney made of record USPTO electronic records regarding the cited registration;⁷ a dictionary definition of "spirit;"⁸ USPTO electronic records regarding third-party use-based registrations covering one

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 November 18, 2022 Office Action at TSDR 1-9.

⁷ *Id.* at TSDR 10-11.

⁸ *Id.* at TSDR 12-13.

or more of the goods identified in the application as well as wine;⁹ and a dictionary translation of the Spanish word “dictador” as “dictator.”¹⁰

Applicant responded by amending its identification of goods; acknowledging that “dictador” means “dictator” in Spanish, but not in Maltese, the language of Applicant’s home country, Malta; disclaiming “SPIRITS;” and arguing against the Section 2(d) refusal. Applicant made of record a copy of its issued European Union Registration No. 018672364,¹¹ and amended its filing basis from Section 44(d) of the Trademark Act, 15 U.S.C. § 1126(d), to Section 44(e), 15 U.S.C. § 1126(e).¹² Applicant also provided a list of third-party registrations from the TSDR database.¹³

The Examining Attorney then issued an Office Action making final the Section 2(d) refusal to register, as well as the requirement for an amendment of the identification of goods. The Examining Attorney made of record dictionary definitions of “dictador” in Spanish and “dictator” in English,¹⁴ and third-party webpages showing the sale of one or more of the alcoholic beverages identified in the application as well as wine.¹⁵ The Examining Attorney also advised Applicant that its submission of a list of third-party registrations in its response to the initial Office Action was

⁹ *Id.* at TSDR 14-29.

¹⁰ *Id.* at TSDR 30-33.

¹¹ May 16, 2023 Response to Office Action at TSDR 17-20.

¹² *Id.* at TSDR 2.

¹³ *Id.* at TSDR 12-13.

¹⁴ November 12, 2023 Final Office Action at TSDR 10-30.

¹⁵ *Id.* at TSDR 31-48.

insufficient to make the registrations of record and that they had not been considered.¹⁶

Applicant appealed and simultaneously requested reconsideration of the final refusal. In its Request for Reconsideration, Applicant entered a translation of “dictador” as “dictator” from Spanish, amended its identification of goods, and argued against the Section 2(d) refusal. Applicant made of record copies of the certificates of registration of Registration No. 4935031 of the mark ART HOUSE for “educational services, namely, providing classes, workshops, and camps in the field of art” in International Class 41;¹⁷ Registration No. 4693670 of the mark InterUrban ArtHouse for various arts-related educational and entertainment services in International Class 41;¹⁸ Registration No. 3536878 of the mark Poster Art House and design for “on-line retail store services featuring posters, namely, movie posters, personality posters, novelty posters, landscape posters, art posters, car posters, travel posters” in International Class 35;¹⁹ and Registration No. 5692158 of the mark ARTHOUSE HOTEL for “hotel services; providing online reservations and bookings for temporary lodging and accommodations” in International Class 43.²⁰ Applicant also made of record third-party webpages reflecting use of the registered marks,²¹ and use of “Art

¹⁶ *Id.* at TSDR 6.

¹⁷ February 12, 2024 Request for Reconsideration at TSDR 32.

¹⁸ *Id.* at TSDR 34.

¹⁹ *Id.* at TSDR 36.

²⁰ *Id.* at TSDR 45.

²¹ *Id.* at TSDR 33, 35, 37, 39, 46-47.

House” in connection with a wine bar,²² a hookah lounge,²³ a cocktail bar,²⁴ and a jazz club.²⁵

The Examining Attorney denied Applicant’s Request for Reconsideration. The Examining Attorney made of record third-party use-based registrations of marks covering various alcoholic beverages including wine,²⁶ as well as Internet webpages displaying the sale of various alcoholic beverages including wine.²⁷

II. Evidentiary Issue

Before turning to the merits of the appeal, we must address an evidentiary issue. Applicant attached to its brief as Exhibit A the results of a search of the USPTO’s trademark database regarding various ART- and HOUSE-formative marks, 7 TTABVUE 17-28, and as Exhibit B third-party webpages showing use of such marks. *Id.* at 29-34. The Examining Attorney argues that these materials were untimely submitted and requests that the Board disregard them. 9 TTABVUE 3.

“The record in the application should be complete prior to the filing of an appeal” and “[e]vidence should not be filed with the Board after the filing of a notice of appeal.” *In re Weiss*, Ser. No. 88621608, 2024 WL 3617597, at *2 (TTAB 2024) (quoting Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)). The only attachments in

²² *Id.* at TSDR 38-39.

²³ *Id.* at TSDR 40-41.

²⁴ *Id.* at TSDR 42-43.

²⁵ *Id.* at TSDR 44.

²⁶ May 12, 2024 Denial of Request for Reconsideration at TSDR 5-87.

²⁷ *Id.* at TSDR 88-142.

Exhibits A and B to Applicant's brief that were already in the record are the third-party registrations of the ARTHOUSE HOTEL and Poster Art House marks, 7 TTABVUE 18, 21, and webpages regarding the Arthouse Hotel. *Id.* at 31. Because the remainder of Exhibits A and B to Applicant's brief involves evidence submitted for the first time on appeal, we grant the Examining Attorney's request to disregard those untimely materials, and will give them no consideration in our decision.

III. Analysis of Section 2(d) 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 *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 focuses almost entirely on the first *DuPont* factor. 7 TTABVUE 12-15. Applicant also alludes briefly to the sixth *DuPont* factor, the “the number and nature of similar marks in use on similar goods.” *DuPont*, 476 F.2d at 1361. 7 TTABVUE 15.

A. The Number and Nature of Similar Marks in Use on Similar Goods

We begin with the sixth *DuPont* factor because it potentially bears on the scope of protection to which the cited mark ART HOUSE for wine is entitled. The sixth factor “is a measure of the extent to which other marks weaken the assessed mark.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). “There are two prongs of analysis for a mark’s strength under the sixth factor: conceptual strength and commercial strength.” *Id.*

Evidence of use of third-party marks may lessen the commercial strength of the cited mark, which involves “the marketplace recognition value of the mark,” *id.* at 1363 (quotation and quotation marks omitted), while evidence of registration of third-party marks may lessen the conceptual strength of the mark, which is the “measure of [the] mark’s distinctiveness.” *Id.* at 1362 (citation omitted).

Turning first to the conceptual strength or weakness of the cited mark, the ART HOUSE mark was registered on the Principal Register without a requirement of a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), and “so is treated as inherently distinctive.” *Monster Energy*, 2023 WL 417620, at *10. Applicant attempts to show that the mark is nevertheless conceptually weak by offering four third-party registrations “containing an element that is common to both . . . marks, [which] can show that that element has ‘a normally

understood and well-recognized descriptive or suggestive meaning.” *Spireon*, 71 F.4th at 1363 (quoting *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)). The four registrations made of record by Applicant are (1) Registration No. 4935031 of the mark ART HOUSE for “educational services, namely, providing classes, workshops, and camps in the field of art;” (2) Registration No. 4693670 of the mark InterUrban ArtHouse for various art-related educational and entertainment services; (3) Registration No. 3536878 of the mark Poster Art House and design for “on-line retail store services featuring posters, namely, movie posters, personality posters, novelty posters, landscape posters, art posters, car posters, travel posters;” and (4) Registration No. 5692158 of the mark ARTHOUSE HOTEL for “hotel services; providing online reservations and bookings for temporary lodging and accommodations.”²⁸ Applicant did not make of record any third-party registrations of ART HOUSE-formative marks for alcoholic beverages.

The various services covered by the four registrations in the record bear no relationship on their faces to the goods identified as “wine” in the cited registration and these registrations thus do not reflect the use of similar marks on similar goods. *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1325 (Fed.

²⁸ As discussed above, Applicant also made of record webpages showing use of the ART HOUSE mark for educational services, the Poster Art House mark for poster services, and the ARTHOUSE HOTEL mark for hotel services. These uses are not for goods similar to wine, and they have no probative value on the commercial weakness of the cited ART HOUSE mark for wine. *Omaha Steaks*, 908 F.3d at 1325.

Cir. 2018); *In re i.am.symbolic, llc*, 866 F.3d 1315, 1328 (Fed. Cir. 2017); *Made in Nature, LLC v. Pharmavite LLC*, Opp. Nos. 91223352, 91223683, and 91227387, 2022 WL 2188890, at *13 (TTAB 2022). The four registrations thus have no probative value regarding the conceptual weakness of the cited mark for wine.

With respect to the possible commercial weakness of the cited mark, Applicant also made of record a handful of third-party uses of ART HOUSE-formative marks in connection with a wine bar, a hookah lounge, a cocktail bar, and a jazz club.²⁹ Each of these uses involves the actual or potential on-premise sale of wine, and the services provided by these users are thus somewhat more similar in nature to the goods in the cited registration than are the services identified in the third-party registrations. But four third-party uses of varying probative value are a “far cry from the large quantum of evidence of third-party use . . . that was held to be significant in both’ *Jack Wolfskin* and *Juice Generation*.” *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at *19 (TTAB 2021) (quoting *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 WL 2734893, at *4 (TTAB 2018)).³⁰ We find that these third-party uses are not probative of the commercial weakness of the cited ART HOUSE mark for wine.

²⁹ The jazz club webpage uses the term “art house” in lower case lettering (i.e., “PAUSA art house”) and touts a “wide variety of music shows and artistic exhibitions from local, national and international artists” for “patrons who wish to attend an intimate concert or an art exhibit while enjoying a glass of wine, beers, tapas and panini sandwiches.” February 12, 2024 Request for Reconsideration at TSDR 44. This suggests use of “art house” not to identify source, but rather to describe the venue at which PAUSA, the identified service provider, provides its music shows and artistic exhibitions.

³⁰ “[I]n *Juice Generation*, there were at least twenty-six relevant third-party uses or registrations of record . . . and in *Jack Wolfskin*, there were at least fourteen.” *In re Morinaga Nyugyo K.K.*, Ser. No. 86338392, 2016 WL 5219811, at *9 n.8 (TTAB 2016).

Applicant did not show the conceptual or commercial weakness of the cited ART HOUSE mark for wine, and we will accord the cited mark “the normal scope of protection to which inherently distinctive marks are entitled.” *In re Info. Builders Inc.*, Ser. No. 87753964, 2020 WL 2094122, at *10 (TTAB 2020). The sixth *DuPont* factor is neutral in our analysis of the likelihood of confusion.

B. 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).

“The 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.” *Id.* (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 person over the legal drinking

age who consumes one or more of the numerous alcoholic beverages identified in the application.

Applicant argues that “the term DICTADOR is the dominant term in Applicant’s composite mark **DICTADOR ARTHOUSE SPIRITS.**” 7 TTABVUE 12 (emphasis supplied by Applicant). According to Applicant, the “term ARTHOUSE is . . . descriptive in the context of Applicant’s composite mark.” *Id.* Applicant cites Exhibits A and B attached to its brief as evidence that “it is common for many to borrow the ‘movie’ term ‘art house,’ which connotes ‘high end’ and apply it in other contexts,” *id.*,³¹ and argues that “the term ‘art house’ is used by many to connote or describe goods as being artistic or innovative and the like.” *Id.*³²

Applicant argues that the presence of the word DICTADOR in its mark eliminates any likelihood of confusion owing to the presence of the words ARTHOUSE and ART HOUSE in the involved marks. *Id.* at 12-13. According to Applicant, “while the word ARTHOUSE and the mark ART HOUSE share the words ART and HOUSE, the word [sic] ARTHOUSE and ART HOUSE are not identical in writing, in sound, or in connotation,” *id.* at 13, because “ARTHOUSE is one word, while ART HOUSE

³¹ Applicant also includes in the body of its brief the same list of third-party registrations that it submitted during prosecution, 7 TTABVUE 7-8, which the Examining Attorney explained during prosecution was insufficient to make the listed registrations of record. November 12, 2023 Final Office Action at TSDR 6. Applicant cites the list in support of its arguments that “[t]here are third party marks that use either ART HOUSE or ARTHOUSE as the primary mark term” and that “there are many third party marks that use the term descriptively.” 7 TTABVUE 7. We will give the list and Applicant’s arguments based on it no further consideration in our decision.

³² In our evidentiary ruling above, we have excluded as untimely all of Exhibits A and B except those portions that Applicant made of record during prosecution.

comprises two words,” *id.*, “ARTHOUSE would be read in one breath (without a pause) while the space between ART and HOUSE in the mark imposes a pause between the words ART and HOUSE,” *id.* at 14, and “the word DICTADOR, which is neither descriptive nor suggestive of spirits, creates a strong distinguishing impression, which is reinforced by the fact that DICTADOR is an arbitrary and fanciful mark as it relates to spirits.” *Id.*

Applicant claims that the cited mark ART HOUSE “is, if not descriptive, clearly suggestive of a quality of wine” because the mark connotes “a HOUSE OF ART, which implies an art venue for commercial or non-commercial cultural activities such as an art gallery” and “[s]erving wine at art galleries or other art venues is common.” *Id.* Applicant argues that the cited mark “suggests wine that is suitable for a cultured crowd, namely those who attend art shows at art galleries or other art venues.” *Id.*

Applicant further argues that “ART HOUSE is ‘the entirety of the commercial impression’ of the allegedly conflicting mark and is suggestive of the quality of the product (wine) while the word DICTADOR makes a stronger commercial impression than the words ARTHOUSE SPIRITS.” *Id.* at 15 (quoting *In re Fiesta Palms LLC*, Ser. No. 76595049, 2007 WL 950952, at *5 (TTAB 2007) (quoting *Knight Textile Corp. v. Jones Inv. Co.*, Opp. No. 91153852, 2005 WL 1691588, at *2 (TTAB 2005)).

Applicant concludes its argument for dissimilarity by claiming that “the words ART HOUSE and the word ARTHOUSE are commonly used and registered for different products,” and that “[b]ecause ART HOUSE and ARTHOUSE are ‘commonly used’, the addition of DICTADOR is ‘sufficient to render the marks as a

whole sufficiently distinguishable.” *Id.* at 15 (quoting *Fiesta Palms*, 2007 WL 950952, at *4).

The Examining Attorney responds that “[t]he marks are similar because each includes the nearly identical distinctive wording ARTHOUSE and ART HOUSE; and the addition of DICTADOR and SPIRITS in applicant’s mark does not overcome the confusingly similar commercial impression created by the marks.” 9 TTABVUE 4.

The Examining Attorney argues that

[t]he addition of a term to a registered mark has often been found to increase the similarity between the compared marks where the dominant portion of the marks is the same. . . . The exceptions to this are when (1) the matter common to the marks is merely descriptive or diluted, and not likely to be perceived by purchasers as distinguishing source, or (2) the compared marks in their entirety convey a significantly different commercial impression – neither of which is the case here.

Id. (citations omitted).

The Examining Attorney further argues that “the matter common to the marks is ART HOUSE and ARTHOUSE, which are virtually identical despite applicant’s presentation of the term in the compound form and its presentation as two words in registrant’s mark.” *Id.* The Examining Attorney points to dictionary definitions of “art house” and “arthouse” in the record that she contends show that “ARTHOUSE and ART HOUSE are inherently distinctive terms when considered in connection with wine and other alcoholic beverages.” *Id.* at 5.

The Examining Attorney also argues that “[a]lthough the registrant’s mark adds DICTADOR and SPIRITS to [the] mark, this does not significantly alter the similar commercial impressions created by the marks” because the “addition of SPIRITS to

applicant's mark is of little source-identifying significance because it is a generic term for applicant's goods and has been disclaimed" and the inclusion of DICTADOR does not create "a mark with a significantly different commercial impression than registrant's mark" because "the additional matter is in the nature of a trade name or house mark." *Id.* at 6 (citations omitted).

In response to Applicant's argument regarding the difference between ART HOUSE and ARTHOUSE, the Examining Attorney argues that there is no supporting record evidence and that the record actually shows that "ARTHOUSE and ART HOUSE are used interchangeably in the dictionary definitions, third-party registrations, and Internet evidence, which [sic] no differences in the meaning of the term." *Id.* at 7. According to the Examining Attorney, "the record includes no evidence that ARTHOUSE/ART HOUSE is a descriptive, highly suggestive, or diluted term in the field of wine and alcohol." *Id.*

The Examining Attorney concludes that "the marks are confusing similar because they share virtually identical distinctive matter, ARTHOUSE and ART HOUSE; and the addition of DICTADOR and SPIRITS to applicant's mark does not alter the confusingly similar commercial impression created by the marks." *Id.* at 10.

We turn now to the required comparison of the standard-character marks ART HOUSE and DICTADOR ARTHOUSE SPIRITS in their entireties. "It is clear that the marks are similar because they both contain the . . . term [ART HOUSE or ARTHOUSE] and they differ because [A]pplicant's mark includes the words [DICTADOR and SPIRITS]." *Fiesta Palms*, 2007 WL 950952, at *2. The main

question under the first *DuPont* factor is whether the addition of DICTADOR and SPIRITS to a compound form of the registered mark ART HOUSE in Applicant's mark results in marks that are more dissimilar than similar when considered in their entireties. *Id.* at *4.

“[T]here is no arbitrary rule of law that if two product marks are confusingly similar, likelihood of confusion is not removed by use of a company or house mark in association with the product mark,” *id.* (citing *New England Fish Co. v. Herwin Co.*, 511 F.2d 562, 564 (CCPA 1975)), and “[t]here have been numerous cases over the years that have reached different conclusions on whether the addition of a house mark avoids confusion.” *Id.* But “[i]t has long been held that the addition of a trade name or house mark to a registered mark does not generally avoid confusion.” *Id.* (citing *Menendez v. Holt*, 128 U.S. 514, 521 (1888)). “Exceptions to this general rule are made when there are some recognizable differences between the assertedly conflicting product marks, so that the addition to one of a trade name or house mark or other such matter may be sufficient to render the marks as a whole distinguishable and thus to avoid confusion” or “when the ‘product mark’ of an applicant is in fact merely descriptive of the applicant’s goods or services and as such would not be regarded by those who are in the market for such goods or services as an indication of the source thereof” *In re C.F. Hathaway Co.*, 1976 WL 20935, at *2 (TTAB 1976). In addition, where the common element of the marks is descriptive or highly suggestive, the addition of other matter such as a house mark or trade name may be

sufficient to render the marks distinguishable. *Knight Textile*, 2005 WL 1691588, at *4.

As discussed above, Applicant offers three primary justifications for application of the exception to the general rule that the addition of matter to a registered mark is insufficient to avoid confusing similarity. First, Applicant argues that “there is no record evidence establishing DICTADOR as a ‘house mark,’ and regardless, Applicant owns too few marks to allow reaching such a conclusion.” 7 TTABVUE 9. This argument is meritless. The general rule is not limited to “house marks” but also covers “trade names” and other matter. *See, e.g., C.F. Hathaway*, 1976 WL 20935, at *2. It appears that DICTADOR is Applicant’s house mark, as Applicant referred in its brief to a registration of DICTADOR for rum, 7 TTABVUE 6,³³ but there is no question that DICTADOR is the source-identifying portion of Applicant’s trade name “Dictador Holding Limited.”

Second, Applicant argues that ARTHOUSE and ART HOUSE “are not identical in writing, in sound, or in connotation” as they appear in the respective marks. *Id.* at 13. We agree with Applicant that these words are not literally identical in “writing,” which we take to mean appearance, when viewed together, but the “marks ‘must be considered . . . in light of the fallibility of 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

³³ Applicant cites no authority for its argument that it must own multiple registrations of the mark DICTADOR for the mark to be considered its house mark.

(CCPA 1977)). There is nothing in the record to suggest that a consumer with a general impression of the cited ART HOUSE mark in his or her mind's eye when Applicant's mark is separately encountered is likely to recall whether the cited mark is one word or two, or to view the word ARTHOUSE in Applicant's mark as materially different from the word in the recalled cited mark. The words ART HOUSE and ARTHOUSE are effectively, if not literally, identical in appearance when the marks are compared separately and in their entireties. *See, e.g., Time Warner Entm't Co. v. Jones*, Opp. No. 112409, 2002 WL 1628168, at *7 (TTAB 2002) (finding that the marks ROAD RUNNER and ROADRUNNER "look essentially the same"); *In re Best Western Family Steak House, Inc.*, 1984 WL 63066, at *1 (TTAB 1984) ("There can be little doubt that the marks [BEEFMASTER and BEEF MASTER] are practically identical"); *Seaguard Corp. v. Seaward Int'l, Inc.*, 1984 WL 62803, at *3 (TTAB 1984) (finding that the "marks 'SEAGUARD' and 'SEA GUARD' are, in contemplation of law, identical").

With respect to sound, there is also nothing in the record to support Applicant's argument that the words ART HOUSE and ARTHOUSE sound different when the respective marks are verbalized because "ARTHOUSE would be read in one breath (without a pause) while the space between ART and HOUSE in the mark imposes a pause between the words ART and HOUSE." 7 TTABVUE 14. "We are not persuaded that the [space] alters the pronunciation of the cited mark in any significant way." *St. Helena Hosp.*, 774 F.3d at 751 (upholding the Board's finding that the marks

TAKE 10! and TAKETEN were similar in sound). It is far more likely that ART HOUSE and ARTHOUSE would sound identical when verbalized.

Finally, with respect to meaning, the dictionary definitions made of record by Applicant indicate that the words ART HOUSE in the cited mark refer to a theater that shows art films, experimental films, and foreign films,³⁴ or to a genre of such films, and do not connote a figurative “house of art,” as Applicant claims. 7 TTABVUE 14. There is no dictionary definition or other evidence indicating that ARTHOUSE has a meaning different from ART HOUSE when the words are used in connection with alcoholic beverages. When so used, both ART HOUSE and ARTHOUSE appear to be arbitrary or, at worst, mildly suggestive, but there is nothing in the record to suggest that they do not have the same meaning in each mark.

For purposes of applying the general rule regarding the addition of a house mark, trade name or other matter to a registered mark, and for our overall analysis, the words ART HOUSE and ARTHOUSE are effectively identical in appearance, sound, and connotation and commercial impression.

Third, Applicant likens this case to the *Knight Textile* case, in which the Board found that the marks NORTON MCNAUGHTON ESSENTIALS and ESSENTIALS were not confusingly similar for clothing. 7 TTABVUE 15. That case bears no factual resemblance to this one, however, because the Board’s finding in *Knight Textile* that the marks were not confusingly similar turned on the fact that the registered mark

³⁴ May 16, 2023 Response to Office Action at TSDR 10-12. Applicant also made of record a dictionary definition of ARTHOUSE that covers a genre of such films. *Id.* at TSDR 10 (CAMBRIDGE ENGLISH DICTIONARY).

ESSENTIALS was “a highly suggestive term as applied to clothing,” *Knight Textile*, 2005 WL 1691588, at *4, based on a dictionary definition of “essentials” in the context of clothing, and more than 20 third-party registrations of marks containing the word ESSENTIALS for clothing. As discussed above, Applicant’s proof here falls far short of showing that the marks’ common elements ART HOUSE and ARTHOUSE are “highly suggestive” of alcoholic beverages.

We turn now to the differences in the marks resulting from the presence of the words DICTADOR and SPIRITS in Applicant’s mark.³⁵ “The question then becomes whether that additional house mark results in marks that are dissimilar enough that confusion is not likely.” *Fiesta Palms*, 2007 WL 950952, at *7. The presence of the word DICTADOR at the front of Applicant’s mark DICTADOR ARTHOUSE SPIRITS is not sufficient to distinguish the two marks when they are considered in their entireties.

Applicant argues correctly that “[t]he dominant term in Applicant’s mark is the term **DICTADOR**, [not] the word ‘arthouse,’” 7 TTABVUE 7 (emphasis supplied by Applicant), but that begs the question of whether a consumer familiar with the cited mark ART HOUSE for wine who separately encounters the DICTADOR ARTHOUSE SPIRITS mark for multiple alcoholic beverages would understand the goods to come from different sources. Applicant “has not submitted evidence that the term [ART

³⁵ We will, of course, consider the impact of the word SPIRIT on the similarity of the involved marks in their entireties, but the word appears in the portion of Applicant’s identification of goods covering “Potable spirits” and is a generic term for those goods and a descriptor of the category of many of the other goods appearing in the identification. SPIRITS has no source-identifying capacity in connection with Applicant’s goods, and has been disclaimed.

HOUSE] is so highly suggestive that the inclusion of its house mark would create significant differences in the marks' appearance, pronunciation, meaning, and commercial impression," or "any evidence that the term [ART HOUSE] is used by others in the [alcoholic beverages] field or that it has any specific meaning in that field other than the general dictionary meaning" set forth in the record. *Fiesta Palms*, 2007 WL 950952, at *7. A consumer with a general rather than specific impression of the cited mark ART HOUSE for wine who separately encounters Applicant's DICTADOR ARTHOUSE SPIRITS mark for numerous types of alcoholic beverages is likely to believe that Applicant's mark identifies the previously anonymous source of the ART HOUSE goods and reflects a line extension from wine into other forms of alcoholic beverages, which, as shown below in our discussion of the second *DuPont* factor, appears to be a frequent practice of vintners. *Id.*

"Similarity is not a binary factor but is a matter of degree." *KME Ger. GmbH v. Zhejiang Hailiang Co.*, Opp. No. 91267675, 2023 WL 6366806, at *10 (TTAB 2023) (quoting *St. Helena Hosp.*, 774 F.3d at 752). The marks as a whole are more similar than dissimilar, and the first *DuPont* factor supports a conclusion that confusion is likely. *Naterra Int'l Inc. v. Bensalem*, 92 F.4th 1113, 1119 (Fed. Cir. 2024).

C. 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)). The identification of goods in Applicant’s application covers numerous types of alcoholic beverages, but “[i]t is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *Id.* (quoting *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 WL 4269983, at *4 n.5 (TTAB 2015)); *see also Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

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) (quoting *Embiid*, 2021 WL 2285576, at *10 (quoting *In re Ox Paperboard, LLC*, Ser.

No. 87847482, 2020 WL 4530517, at *6 (TTAB 2020)). “In addition, [t]he application and registration themselves may provide evidence of the relationship between the [goods].” *Id.* (quoting *Monster Energy*, 2023 WL 417620, at *7).

The identifications of goods in Applicant’s application and in the cited registration both cover alcoholic beverages. There is no per se rule that all alcoholic beverages are related, *In re White Rock Distilleries Inc.*, 2009 WL 3401827, at *2 (TTAB 2009), and the Board “must assess each mark on its own facts and record,” *In re Korn Ferry*, Ser. No. 90890949, 2024 WL 3219482, at *5 (TTAB 2024) (citations omitted), but the Federal Circuit and the Board have frequently found various types of alcoholic beverages to be related. *See, e.g., In re Chatham Int’l Inc.*, 380 F.3d 1340, 1344 (Fed. Cir. 2004) (upholding Board’s finding that tequila and beer or ale were related); *In re Majestic Distilling Co.*, 315 F.3d 1311, 1316 (Fed. Cir. 2003) (upholding Board’s finding that malt liquor and tequila were related); *Monarch Wine Co. v. Hood River Distillers, Inc.*, Ser. No. 455833, 1977 WL 22627, at *2-3 (TTAB 1977) (finding that wine and distilled spirits were related); *In re AGE Bodegas Unidas, S.A.*, Ser. No. 16765, 1976 WL 21131, at *1 (TTAB 1976) (finding that wine and whiskey were related).

Perhaps recognizing the frequency with which various types of alcoholic beverages have been found to be related, and the fact that it seeks registration of its mark here for **all** “Alcoholic beverages, except beer and wine,” Applicant does not address the second *DuPont* factor in its brief, thus “[a]pparently conceding the issue”

Morinaga Nyugyo, 2016 WL 5219811, at *2. Because relatedness must be shown in each case, we turn to a brief discussion of the record evidence of relatedness here.

“We begin with the identifications of . . . [goods] in the registration and application under consideration.” *OSF Healthcare Sys.*, 2023 WL 61400427, at *5 (quoting *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at *3 (TTAB 2019)). The cited registration covers “wine,” while the application covers numerous broadly and specifically described alcoholic beverages, including “Alcoholic beverages, except beer and wine.” We must give the goods identified in the application “their full scope in our analysis of the second *DuPont* factor,” *id.* (citing *Country Oven*, 2019 WL 6170483, at *3), and, by definition, the goods identified as “Alcoholic beverages, except beer and wine” cover alcoholic beverages of every sort other than beer and wine.

“As a general proposition, third-party registrations that cover goods and services from both the cited registration and an Applicant’s application are relevant to show that the goods and services are of a type that may emanate from a single source under one mark.” *Country Oven*, 2019 WL 6170483, at *5 (citations omitted). The Examining Attorney made of record 17 third-party use-based registrations, all of which appear to separately owned, that cover both the goods identified in the cited registration as “wine” (or “wines”) and the “Alcoholic beverages, except beer” identified in the application: Registration Nos. 6255413; 6170335; 5671428; 5945266;

5659182; 5548652; 7284930; 5965160; 6665179; 5708818; 6739805; 6295947; 6992295; 7080797; 5803188; 7207962; and 7327963.³⁶

The Examining Attorney also made of record numerous third-party use-based registrations that cover both “wine” (or “wines”) and one or more of the alcoholic beverages that are specifically identified in the application or that fall within the full scope of one or more of the goods identified in the application. These include Registration Nos. 2791187 (“distilled spirits” and other alcoholic beverages); 6735317 (“liqueurs,” “rum,” “distilled blue agave liquor,” “potable spirits,” “whiskey spirits,” and other alcoholic beverages); 6747967 (“alcoholic cordials,” “alcoholic cocktails,” “alcoholic beverages with flavors, produced from grain, sugar, and brewed malt bases,” “distilled spirits,” and other alcoholic beverages); 5335594 (“liquor”); 7171119 (“Alcoholic and liquor beverages”); 5794754 (“Alcoholic beverages, namely, vodka, whisky, bourbon, tequila, rum”); 6581469 (“liquor” and “distilled spirits”); 4828270 (“spirits,” “liquors” and other alcoholic beverages); 6747967 (“distilled spirits” and other alcoholic beverages); 3587909 (“vodka, gin, rum, tequila, brandy, scotch whiskey, and bourbon whiskey”); 6296247 (“liquor”); 3472828 (“liqueur and distilled and potable spirits”); 5959883 (“liquor”); 4373493 (“liquor” and other alcoholic

³⁶ November 18, 2022 Office Action at TSDR 16-17, 18-19, 22-23, 24-25; May 12, 2024 Denial of Request for Reconsideration at TSDR 6-7, 8-9, 12-13, 15-17, 22-23, 28-29, 53-54, 61-62, 63-64, 72-73, 77-78, 83-84, 85-86.

beverages); 6101364 (“distilled spirits”).³⁷ All but two of these registrations appear to be separately owned.

Finally, the Examining Attorney made of record pages from third-party websites that offer wine and some form of alcoholic beverage other than beer or wine under the same mark. We summarize them below:

- Wollersheim Winery (wollersheim.com), which offers wines as well as rye, bourbon, gin, and other alcoholic beverages;³⁸
- Sweetgrass Winery & Distillery (sweetgrasswinery.com), which offers wines as well as gin, bitters, and rum;³⁹
- Round Barn Winery Brewery Distillery (roundbarn.com), which offers wines as well as whiskey, agave, gin, vodka, and rum;⁴⁰
- Six Mile Creek Winery and Distillery (sixmilecreek.com), which offers wines as well as various spirits, including vodka and gin;⁴¹ and
- Nashoba Valley Winery (nashobawinery.store), which offers wines as well as whiskey, gin, vodka, and rum.⁴²

The record shows that “third parties have registered and use the same mark to offer the goods of the Registrant and the [goods] of the Applicant,” and “suffices to

³⁷ November 18, 2022 Office Action at TSDR 20-21, 26-27, 28-29; May 12, 2024 Denial of Request for Reconsideration at TSDR 5, 10-11, 32-33, 34, 35-36, 43-44, 51-52, 67-68, 70-71, 76, 81-82, 87.

³⁸ November 12, 2023 Final Office Action at TSDR 31-37; May 12, 2024 Denial of Request for Reconsideration at TSDR 88-98.

³⁹ November 12, 2023 Final Office Action at TSDR 38-45; May 12, 2024 Denial of Request for Reconsideration at TSDR 99-114.

⁴⁰ November 12, 2023 Final Office Action at TSDR 46-48; May 12, 2024 Denial of Request for Reconsideration at TSDR 126-28.

⁴¹ May 12, 2024 Denial of Request for Reconsideration at TSDR 115-25.

⁴² *Id.* at 126-42.

show that [the goods] are clearly related.” *Country Oven*, 2019 WL 6170483, at *8. The second *DuPont* factor supports a conclusion that confusion is likely.

D. Summary of *DuPont* Factors

The key first and second *DuPont* factors both support a conclusion that confusion is likely, while the sixth *DuPont* factor is neutral. The ART HOUSE and DICTADOR ARTHOUSE SPIRITS marks are more similar than dissimilar in all means of comparison and the record shows that wine, and other alcoholic beverages, are frequently offered under the same marks. We conclude, based on the record as a whole, that a consumer with a general rather than specific impression of the cited ART HOUSE mark for wine who separately encounters Applicant’s DICTADOR ARTHOUSE SPIRITS mark for various types of alcoholic beverages other than wine is likely to believe mistakenly that the goods have a common source.

Decision: The refusal to register is affirmed.