

This Opinion is Not a
Precedent of the TTAB

Mailed: November 21, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re A JW Production, LLC

Serial Nos. 97426636
—

John E. Russell of Allmark Trademark,
for A JW Production, LLC.

Uloma Ukaoma, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.
—

Before Wellington, Heasley, and Lebow,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

A JW Production, LLC (“Applicant”) seeks registration on the Principal Register of the standard-character mark ONE DROP CONFERENCE (disclaiming the term CONFERENCE) for the following services, as amended:

Business and direct sales training, and distributing course materials in connection therewith; educational services, namely, developing, arranging, and conducting business conferences, seminars, classes, workshops, training, and programs in the fields of business, leadership,

and entrepreneurship, none of which relate to humanitarian projects, in International Class 41.¹

The Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark ONE DROP, registered on the Principal Register for "business management, planning, and development of humanitarian projects for improving quality of life and living conditions of underprivileged populations," in International Class 35; and "charitable fund raising; financing of humanitarian projects for improving quality of life and living conditions of underprivileged populations," in International Class 36.²

After the refusal was made final by the Examining Attorney, Applicant filed a request for reconsideration, which was denied. Applicant timely filed an appeal, which is fully briefed. For the reasons explained below, we reverse the refusal.³

¹ Application Serial No. 97426636, filed on May 24, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark in commerce.

² Registration No. 3715309 issued on November 24, 2009; renewed.

³ Citations are to the downloadable .pdf versions of documents in the Trademark Status & Document Retrieval (TSDR) database. Citations to the briefs refer to TTABVUE, the Board's online docket system.

Also, as part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion varies from the citation form recommended in the TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2023). 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 only 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 employs citation to the Westlaw (WL) database. Until further notice, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

I. Likelihood of Confusion Analysis

“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 under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); see also *In re Charger Ventures*, 64 F.4th at 1381.

We consider each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 2015 WL 1646447, at *8 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). Varying weight, however, may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods or services. See *In re Chatam*

Int'l Inc., 380 F.3d 1340, 1341-42 (Fed. Cir. 2004); *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 [or services] and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods [or services].’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002)). We address these two factors and other relevant *DuPont* factors below.

The Examining Attorney bears the burden of supporting the likelihood of confusion refusal with sufficient evidence, and this is particularly so when it comes to establishing a relationship between goods or services. *See, e.g., In re Shipp*, 1987 WL 123841, *2 (TTAB 1987) (“If it is customary or expected that [the goods and services at issue are related under normal trade practices] ..., it would be the Examining Attorney’s burden to show these trade practices and in the absence of evidence on this matter, we conclude that the goods and services are not so related that confusion would be likely.”); *In re Planprint Co.*, 1986 WL 83672, *4 (TTAB 1986) (When “the Office’s burden to demonstrate that confusion is likely has not been met ..., the mark is approved for publication ...”).

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.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 746 F.3d at 1321; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). The focus is on the recollection of an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 2012 WL 1267956, at *5 (TTAB 2004); *Sealed Air Corp. v. Scott Paper Co.*, 1975 WL 20752, at *3 (TTAB 1975).

Here, the marks are very similar in appearance, sound and commercial impression because the registered mark, ONE DROP, is the primary and sole distinctive element of Applicant’s mark, ONE DROP CONFERENCE. Because the marks either begin with or comprise the same two words, ONE DROP, the marks are visually and aurally extremely close. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered”).

The addition of the term CONFERENCE in Applicant's mark is a point of difference, but it does very little in terms of distinguishing the marks because it is highly descriptive, if not generic, for the recited services. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (finding the descriptive and disclaimed portions of the applicant's mark "unlikely to change the overall commercial impression engendered by the marks.") (citing *Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *see also In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression"). The term CONFERENCE merely describes one type of educational service Applicant intends to provide, "conducting business conferences," and as such does little to help distinguish the mark from that of Registrant.

Applicant argues that "it is the difference in 'meaning' which most stands out between the marks."⁴ Specifically, Applicant asserts that the Registrant's use of ONE DROP "obviously refers to 'one drop' of water ... [and this is] the inspiration for [Registrant] to provide access to clean water for disadvantaged groups."⁵ In support, Applicant submitted printouts from the Registrant's website.⁶

In contrast, Applicant argues that its use of ONE DROP "refers to 'drops' of knowledge ... taken from the vernacular saying of 'dropping knowledge' on someone,

⁴ 6 TTABVUE 15.

⁵ 6 TTABVUE 15.

⁶ Applicant's Request for Reconsideration, filed November 8, 2023, at TSDR pp.

i.e., informing them of previously unknown facts.”⁷ In support of this connotation, Applicant submitted a definition of the term “drop knowledge” from the Urban Dictionary website, as well as printouts from a website and Facebook page associated with Applicant and its principal, Mr. Jack Wu.⁸

We are not convinced that consumers will understand the term ONE DROP in the different manners asserted by Applicant. That is, despite any intent by Applicant to use ONE DROP to evoke one meaning and Registrant’s use to evoke another, the record does not establish that ONE DROP, by itself, conveys these different meanings to consumers. In assessing the similarity of the marks, we must consider only the marks before us in connection with the services recited in the application and registration, regardless of what Applicant may intend to convey through its mark or how the Registrant actually uses its mark. *See, e.g., B.V.D. Licensing Corp. v. Rodriguez*, Opp. No. 91157529, 2007 WL 616036, *8 (TTAB 2007) (“[W]e assess the connotation of applicant’s mark from the perspective that consumers will see only that which applicant seeks to register.”); *Blue Cross & Blue Shield Ass’n v. Harvard Cmty. Health Plan, Inc.*, Opp. No. 91078270, 1990 WL 354563 (TTAB 1990) (rejecting applicant’s arguments as to its intended meaning in adopting the elements of its mark, in view of the possible consumer perception of the mark); *In re i.am.symbolic, llc.*, Ser. No. 85044494, 2015 WL 6746544, *7 (TTAB 2015) (finding that applicant’s

⁷ 6 TTABVUE 15.

⁸ Applicant’s Request for Reconsideration, filed November 8, 2023, at TSDR pp. 21-22 and 41-42.

and registrant's identical marks would be perceived similarly despite applicant's intentions to promote its mark in connection with a famed music artist).

To be clear, although the printouts from Registrant's website show use of its ONE DROP mark alongside a stylized water drop logo and show that Registrant is involved in a humanitarian project to "ensure sustainable access to safe water," this does not prove that ONE DROP has a known meaning to consumers of Registrant's services. Registrant's services are broadly described as being in the field of "humanitarian projects for improving quality of life and living conditions of underprivileged populations," thus including many other projects unrelated to access to safe water.

Similarly, it has not been demonstrated that ONE DROP CONFERENCE would necessarily be understood by Applicant's consumers to mean the offering of information or imparting knowledge. Although Applicant's educational services clearly involve imparting knowledge to others, the evidence does not show that consumers would equate or connect the term ONE DROP with "drop[ping] knowledge," as that expression is described in the Urban Dictionary. Again, we have no reason to doubt Applicant's intent to make this connection, but we must take into consideration consumers unaware of Applicant's intentions.

Thus, in terms of meaning, we find consumers are more likely to understand Registrant's mark, ONE DROP, and the presence of this same term in Applicant's mark, ONE DROP CONFERENCE, as an arbitrary expression when used in connection with Applicant's services. While ONE DROP can conjure rain, or a small

measure of liquid, or simply a small amount of anything, its presence in the marks may convey the same meaning to consumers.

For these reasons, the marks are overall very similar in sight, sound, and connotation, differing only in the addition of the descriptive or generic word CONFERENCE in Applicant's mark.

The first *DuPont* factor weighs heavily in favor of finding confusion likely.

B. Similarity or Dissimilarity of the Services; Trade Channels

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” and under the third *DuPont* factor we consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361; *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306, 1308 (Fed. Cir. 2018); *Sabhnani v. Mirage Brands, LLC*, 2021 WL 6072822, at *8 (TTAB 2021). We must base our comparisons on the services identified in the application and cited registration. *E.g.*, *In re Charger Ventures*, 64 F.4th at 1383 (“The relevant inquiry in an ex parte proceeding focuses on the goods and services described in the application and registration.”) (emphasis omitted); *Sabhnani v. Mirage Brands*, 2021 WL 6072822, at *10 (“[A]s with the relatedness of the goods, the similarity or dissimilarity of the channels of trade must be determined based on the identifications of goods in the parties’ registrations rather than current real-world conditions.”).

We also keep in mind that “the greater the degree of similarity between the applicant’s mark and the registered mark, the lesser the degree of similarity between

the applicant's goods and registrant's goods that is required to support a finding of likelihood of confusion." *In re Thor Tech, Inc.*, 2009 WL 1098997, *2 (TTAB 2009). See also *Time Warner Entm't Co. v. Jones*, 2002 WL 1628168, *8 (TTAB 2002) (same). Nonetheless, some relationship must exist in order to find confusion likely and, in some cases, the identifications themselves may suffice to find relatedness. See *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (finding the Board erred in concluding that there was insufficient evidence of relatedness, because the Board "did not consider the important evidence already before it, namely the [parties' application and registrations]" and the Board "declined to compare the services" recited in them). That is not case here. After careful review, based upon the plain meaning of the recitations of services in the application and cited registration, we do not find that they are related. Thus, if there is such a relationship, it must be proven. *Shipp*, 1987 WL 123841, *2.

The Examining Attorney, in arguing that the respective services are related, focuses on Applicant's "educational services, namely, ... conducting business conferences" and Registrant's "business management, planning, and development of humanitarian projects for improving quality of life and living conditions of underprivileged populations."⁹ In support, the Examining Attorney submitted internet evidence that she argues "establishes that the same entity commonly provides the relevant services."¹⁰ That evidence consists of screenshots from thirteen

⁹ 8 TTABVUE 5-8.

¹⁰ 8 TTABVUE 6; printouts from websites attached to Office Actions issued on March 22, 2023 and August 9, 2023, and denial of Request for Reconsideration (4 TTABVUE).

different websites. For each website, the Examining Attorney repeated the same description as to its purported probative value:¹¹

The screenshots from this source demonstrate that [the named organization] provides both educational services in the nature of business training and business planning and development in field of humanitarian projects for improving the quality of life of underprivileged populations.

However, upon close review of the screenshots from each website, we do not find that the Examining Attorney's evidence supports her contentions. Many of the websites do not show that services, like those offered by Applicant and those offered by Registrant, are being provided by the same entity. For example, the screenshots for the first two organizations listed by the Examining Attorney in her appeal brief, "Connecting Business Initiative" and "World Economic Forum," do not show that either of these organizations actually provides "educational services in the nature of business training." As described in the screenshots, the World Economic Forum is actually an annual meeting of world leaders "to address the state of the world and discuss priorities for the year ahead."¹²

Other organizations identified in the Examining Attorney's internet evidence do not appear to be offering "business management, planning, and development of humanitarian projects for improving quality of life and living conditions of underprivileged populations," as described in the cited registration. For example, the website for Integrity Solutions indicates this company provides consultation services through "training programs" and "industry expertise" for "non-profit leaders." While

¹¹ 8 TTABVUE 7-8.

¹² March 22, 2023 Office Action, at TSDR p. 9.

some of the clients of this company may engage in humanitarian efforts, there is no indication that Integrity Solutions is actually engaged in the humanitarian projects. Similarly, another organization, Oratium, is a consulting firm that provides “E-Learning Courses,” assisting other companies with communications and “sales messaging,” including “nonprofit/donor” organizations.¹³ The fact that some of Oratium’s clients, but not Oratium itself, may be involved in humanitarian project services, like Registrant, is too tangential of a connection for purposes of establishing a relationship between the services.

The problems with this internet evidence—only showing services like those described in the application or those in the cited registration, but not both—are so prevalent that it fails to establish a relationship between Applicant’s and Registrant’s services. The Examining Attorney does not point to any other evidence to support a showing of a relationship between the services. Thus, the burden of establishing that relationship has not been met.

We note that Applicant, in its reply brief, argues that it expressly included the restriction “none of which relate to humanitarian projects” to its educational services, and that the Examining Attorney “entirely fail[ed] to address this restriction.”¹⁴ It is true that the Examining Attorney did not discuss this restriction in determining the relatedness of the services. However, the restriction plays no role in making our determination that there has been no showing of a relationship between Applicant’s

¹³ 4 TTABVUE 11-26.

¹⁴ 9 TTABVUE 3.

and Registrant's services. As we often point out, consumers are most likely unaware of limitations in applications, and they are thus "not controlling of public perception." *In re Aquitaine Wine USA, LLC*, 2018 WL 1620989, *7 (TTAB 2018) (citing *In re The Clorox Co.*, 578 F.2d 305, 308 (CCPA 1978) ("[T]he locus of potential confusion is [not] in the files of the PTO.")).

Because it has not been demonstrated that Applicant's and Registrant's services are related, the second *DuPont* factor does not favor a finding that confusion is likely.

The third *DuPont* factor involves a consideration of the established and likely-to-continue channels of trade for the respective services. *See Detroit Athletic Co.*, 903 F.3d at 1308 (citing *DuPont*, 476 F.2d at 1361). The Examining Attorney argues that "[i]n the absence of limitations as to channels of trade or classes of purchasers in the ... services in the registration, the presumption is that the ... services move in all trade channels normal for such goods and/or services and are available to all potential classes of ordinary consumers of such goods and/or services."¹⁵ While this is correct when interpreting Registrant's trade channels, this is irrelevant when we have no evidence showing that Applicant's services would be offered in any of those same trade channels. As discussed, the internet evidence shows entities providing services like those offered by either Applicant or Registrant, but not both types of services.

Accordingly, on this record, it has not been demonstrated that the involved services would be found in the same channels of trade. The third *DuPont* factor therefore does not favor a finding of likely confusion.

¹⁵ 8 TTABVUE 9.

C. Sophistication of the Relevant Consumers

The fourth *DuPont* factor concerns “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ v. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361. A heightened degree of care when making a purchasing decision may tend to minimize likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985) (because only sophisticated purchasers exercising great care would purchase the relevant goods, there would be no likelihood of confusion merely because of the similarity between the marks NARCO and NARKOMED). Conversely, impulse purchases of inexpensive goods or services may tend to have the opposite effect. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1376 (Fed. Cir. 2005).

Applicant argues that “the major brand name companies and philanthropists that seek to partner with [Registrant], are the epitome of ‘sophisticated’ purchasers.”¹⁶ Applicant goes on to state that it is “inconceivable that there would be any confusion as to the source of these respective services” because “the entrepreneurs who are followers of [Applicant’s principal] Jack Wu are similarly ‘discriminating’ ... [and o]nly those familiar with Mr. Wu’s teachings on financial success such as those who subscribe to his JW app, would attend a ONE DROP CONFERENCE.”¹⁷ Applicant, however, does not support any of the aforementioned statements with evidence.

¹⁶ 6 TTABVUE 16.

¹⁷ 6 TTABVUE 16.

Nevertheless, we can infer from the nature of Registrant's services that those who engage its services, including "business management, planning, and development of humanitarian projects for improving quality of life and living conditions of underprivileged populations," are likely to take more time and be well aware of the organization with whom they are dealing. However, we keep in mind that even those consumers who may be sophisticated or knowledgeable in a particular field, like those engaged in business with Registrant, are not necessarily sophisticated in the field of trademarks or immune from source confusion. *See, e.g., Stone Lion*, 746 F.3d at 1325; *Edom Labs. Inc. v. Lichter*, 2012 WL 1267961, at *8 (TTAB 2012) ("[E]ven consumers who exercise a higher degree of care are not necessarily knowledgeable regarding the trademarks at issue, and therefore immune from source confusion.").

Applicant's educational services, on the other hand, may target anyone in the general public interested in learning more about business, leadership and entrepreneurship. Although this would not fall into the "impulse purchase" category, this could include individuals not exercising an inordinate amount of care. Again, we must base our decision "on the least sophisticated potential purchasers." *Stone Lion*, 746 F.3d at 1325.

In sum, the record does not support a finding that Applicant's services target persons who exercise an inordinate amount attention to the source for those services. On the other hand, a high degree of care will be taken by individuals or organizations interested in becoming involved with Registrant's services in the field of humanitarian projects for improving quality of life and living conditions of

underprivileged populations. Accordingly, we find the fourth *DuPont* factor only slightly favors finding confusion less likely.

D. Weighing of Factors - Conclusion

Registrant's standard-character mark, ONE DROP, and Applicant's mark, ONE DROP CONFERENCE, are highly similar. Although this factor weighs strongly in favor of finding confusion likely, the record is devoid of evidence showing a relationship between Applicant's services and the services listed in the cited registration. Additionally, there is no showing that Applicant's services and Registrant's services are the types of services that are marketed through overlapping trade channels or offered to any of the same consumers.

In weighing these findings, as well as our finding that persons or organizations will exercise a higher level of care if engaging Registrant for its services, the burden of demonstrating a likelihood of confusion has not been met. Accordingly, we disagree with the refusal to register Applicant's mark on the ground of a likelihood of confusion with Registrant's mark.

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