

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: June 25, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re USA Innovations, Inc.*

Serial No. 97441814  
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Jared Stark of Stark Business Law PLLC, for USA Innovations, Inc.

Bridgett Smith, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

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Before Greenbaum, Goodman and Heasley,  
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

USA Innovations, Inc. (“Applicant”) seeks registration on the Principal Register  
of the standard character mark HOLLYWOOD COFFEE CO. for

Retail store services featuring packaged coffee and  
packaged foods, in International Class 35.<sup>1</sup>

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

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<sup>1</sup> Application Serial No. 97441814 was filed on June 3, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and first use in commerce since at least as early as April 13, 2022, and includes a disclaimer of “COFFEE CO.”

Applicant's mark, when used on or in connection with the identified services, so resembles the mark HOLLYWOOD CAFÉ in standard characters and with design,



displayed as , both owned by a single Registrant and registered on the Principal Register, for

Mobile restaurant services; restaurant and café services; restaurant services featuring coffee, coffee products, other hot and cold beverages, desserts, pastries and snacks, in International Class 43,

as to be likely to cause confusion, mistake or deception.<sup>2</sup>

When the refusal was made final, Applicant requested reconsideration and appealed to this Board. Reconsideration was denied, proceedings were resumed, and the appeal is fully briefed. We affirm.

#### I. Evidentiary Issue

Applicant included in its brief a list of third-party registrations for HOLLYWOOD-formative marks that were not previously made of record, and to which the Examining Attorney objects. App. Br., 6 TTABUVE 9-10; Ex. Atty. Br., 8 TTABVUE 13-14. We sustain the objection. Only evidence filed during examination

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<sup>2</sup> Reg. No. 4956219 (standard characters, CAFÉ disclaimed) issued on May 10, 2016 and has been maintained.

Reg. No. 4969093 (design, CAFÉ disclaimed) issued on May 31, 2016, has been maintained, and describes the mark as “consist[ing] of a literal element which is the words ‘HOLLYWOOD CAFÉ,’ with the second word appearing under the first, depicted inside a thick oval shaped geometric shape that is orange in color. Above the literal element is an image of an orange and white coffee cup, placed on top of a white saucer, which in turn rests on top of a four-point star.” The colors orange and white are claimed as a feature of the mark.

is timely, Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), and it should not be submitted on appeal. *See, e.g., In re Dist. of Columbia*, 101 USPQ2d 1588, 1591-92 (TTAB 2012) (third-party registrations submitted for first time with appeal brief are not considered), *aff'd sub nom., In re City of Houston*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 1203.02(e) and 1207.01 (2023). We therefore do not further consider this evidence or any related arguments based on this evidence.<sup>3</sup>

## II. Likelihood of Confusion

“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, 2023 USPQ2d 451, at \*2 (Fed. Cir. 2023) (cleaned up).

Our determination under Trademark Act Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (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, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The

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<sup>3</sup> In addition, mere listings of registrations are not sufficient to make the registrations of record. *In re Hoefflin*, 97 USPQ2d 1174, 1177 (TTAB 2010). For information about the proper procedure to make registrations or record in an appeal, see TBMP 1208.02.

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, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *Charger Ventures*, 2023 USPQ2d 451, at \*4 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not relevant to the analysis.”). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at \*3 (Fed. Cir. 2020) (citing *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)). However, in any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”).

In applying the *DuPont* factors, we bear in mind the fundamental purposes underlying Trademark Act Section 2(d), which are to prevent consumer confusion as to source and to protect registrants from damage caused by registration of similar

marks likely to cause such confusion. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *see also Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *DuPont*, 177 USPQ at 566.

For purposes of our likelihood of confusion analysis, we focus on the standard character mark HOLLYWOOD CAFÉ (Reg. No. 4956219) (“Registrant’s mark”). If we find a likelihood of confusion with this mark and its identified services, we need not find it as to the cited registered design mark (Reg. No. 4969093) and the identical identified services. *See, e.g., Fiserv, Inc. v. Elect. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015); *In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. Similarity or Dissimilarity of the Marks

We compare Applicant’s mark HOLLYWOOD COFFEE CO. and Registrant’s mark HOLLYWOOD CAFÉ, both in standard characters, “in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Ath. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018). *See also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). “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.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018). “Similarity is not a binary factor but

is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quotation omitted).

Further, the marks “must be considered ... in light of the fallibility of memory ....” *Id.* at 1085 (quotation omitted). We focus on the recollection of the average consumer – here, an ordinary consumer – who normally retains a general rather than a specific impression of trademarks. *See id.* at 1085; *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F2d 1005, 169 USPQ 39, 40 (CCPA 1971).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). For instance, as the Federal Circuit has observed, “[t]hat a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark....” *Nat’l Data*, 224 USPQ at 751.

Applicant argues that the marks look and sound different, that they convey different commercial impressions, and that the Examining Attorney dissected the marks, giving undue weight to the shared term HOLLYWOOD, rather than comparing the marks in their entireties. The Examining Attorney focuses on the visual and aural similarities between Applicant's mark and Registrant's mark due to the common term HOLLYWOOD, which she contends is the most distinctive portion, and therefore the strongest source identifying element of both marks, combined with terms that are descriptive or generic for Applicant's and Registrant's identified services. We agree with the Examining Attorney's assessment of the similarity of the marks.

When considered in their entireties, we find Applicant's mark HOLLYWOOD COFFEE CO. and Registrant's mark HOLLYWOOD CAFÉ similar in appearance, sound, connotation, and overall commercial impression due to the shared term HOLLYWOOD. There is no evidence HOLLYWOOD has any meaning or significance when applied to "retail store services featuring packaged coffee and packaged foods" of the type identified in the application, or to the restaurant/café services or restaurant services featuring coffee of the type identified in the cited registration, and there is no evidence of use or registration by third parties of similar marks in association with similar services that might dilute the source identifying capacity of HOLLYWOOD for those services. *Cf. Juice Generation, Inc. v. GS Enters LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d

1129, 1136 (Fed. Cir. 2015). The prominence of the word HOLLYWOOD is further enhanced by its placement at the beginning of Applicant's and Registrant's marks. *See Palm Bay Imps.*, 73 USPQ2d at 1692; *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988).

On the other hand, "CAFÉ" is generic for Registrant's identified "café services," "COFFEE" is at least descriptive for Applicant's identified "retail store services featuring packaged coffee," and both terms appropriately have been disclaimed. *See Dixie Rests.*, 41 USPQ2d at 1533-34 (DELTA, not the disclaimed generic term CAFÉ, is the dominant portion of the mark THE DELTA CAFÉ and design). Descriptive or generic matter typically is less significant or less dominant when comparing marks. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (quoting *Nat'l Data.*, 224 USPQ at 752 (the "descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion")). We find that to be the case here. Moreover, in this case, the term "CO." in Applicant's mark is simply an entity designation with no source identifying capacity. *Id.*; *see also In re Wm. B. Coleman Co.*, 93 USPQ2d 2019, 2025 (TTAB 2010) (with respect to ELECTRIC CANDLE COMPANY, "Electric Candle" is a unitary generic term and "Company" is simply a designation for a type of entity without source-identifying capability.)).

For these reasons, we find HOLLYWOOD the dominant term in each mark, and accordingly, it is entitled to more weight in our analysis. In making this finding, we do not ignore the presence of the additional terms in each mark. However, for the



reasons discussed above, we find consumers are more likely to remember HOLLYWOOD than the other terms in each mark. *Nat'l Data*, 224 USPQ at 751.

While there are some specific differences between HOLLYWOOD CAFÉ and HOLLYWOOD COFFEE CO., when the marks are viewed in their entireties, they are similar in appearance, sound and connotation, and they convey similar commercial impressions, due to the common presence of the identical arbitrary term HOLLYWOOD.

The first *DuPont* factor thus supports a finding of a likelihood of confusion.

#### B. Similarity or Dissimilarity of the Services

The second *DuPont* factor “considers whether ‘the consuming public may perceive [the respective ... services of the parties] as related enough to cause confusion about the source or origin of the ... services.’” *St. Helena Hosp.*, 113 USPQ2d at 1086 (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)). Under this *DuPont* factor, we compare the services as they are identified in the application and cited registration. *See Detroit Ath. Co.*, 128 USPQ2d at 1052; *Dixie Rests.*, 41 USPQ2d at 1534; *see also Stone Lion*, 110 USPQ2d at 1161 (Board must “give full sweep” to an identification of goods or services regardless of registrant’s actual business); *Hewlett-Packard*, 62 USPQ2d at 1004; *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Although the services identified in the application and cited registration are not identical, identity is not required to support a finding of likelihood of confusion. *Coach*

*Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (“[I]t is not necessary that the products [or services] of the parties be similar or even competitive to support a finding of likelihood of confusion.”) (quotation omitted); *see also On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000) (the services need not be identical or even competitive to find a likelihood of confusion). Rather “likelihood of confusion can be found if the respective products are 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.*, 101 USPQ2d at 1722 (citation and internal quotation omitted).

To demonstrate relatedness, the Examining Attorney submitted Internet printouts from the third-party websites of Black Acres Roastery, Zeke’s Coffee, Starbucks and Dunkin’, all of which offer under their own names restaurant services featuring coffee like those identified in the cited registration, and packaged coffee through a retail component like the retail store services identified in the application. March 28, 2023 Office Action, TSDR 5-7; November 14, 2023 Request for Reconsideration Denied, TSDR 4-6. Evidence showing that the involved services are offered by companies under the same mark supports a finding of relatedness. *See, e.g., Detroit Ath. Co.*, 128 USPQ2d at 1051 (crediting relatedness evidence showing third parties use the same mark for the goods and services); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*46 (TTAB 2022) (third-party websites promoting sale of both parties’ goods showed relatedness).

The Examining Attorney also made of record seven third-party use-based registrations for the marks SUNDAY PRESS (Reg. No. 6640343); THE PECCARY



(Reg. No. 5782746); (Reg. No. 6881077);<sup>4</sup> PRESS AND GRIND (Reg. No. 6842163); BFY SNACKS (Reg. No. 5888934); RED FLEECE CAFÉ (Reg. No. 5380116); and LIMITLESS (Reg. No. 5226976), July 11, 2023 Final Office Action, TSDR 2-5, 7-9, covering the types of restaurant and café services identified in the cited registration as well as retail store services featuring packaged coffee of the type identified in the application. The third-party registrations also are probative of the relatedness of the services because they suggest the listed services are of a type that may emanate from the same source. *See, e.g., In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). We find the identified services commonly emanate from the same source under the same mark, and therefore they are related.

In light of these findings, we need not further consider whether the “retail store services featuring ... packaged foods” identified in the application also are related to any services identified in the cited registration. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of

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<sup>4</sup> Reg. No. 6881077 includes this description of the mark: “The mark consists of an individual seated on a horse, the individual has one arm raised.” There is no corresponding color claim statement.

confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application or registration).

We find inaccurate and inapposite Applicant's contention that "[t]he Examining Attorney simply argued that the goods (coffee) and services (restaurant services) are used together and did not provide 'something more' to provide substantial evidence of the relatedness." 6 TTABVUE 9. The Examining Attorney did not make this argument. Moreover, this case does not involve restaurant-type services on the one hand and food or beverage products on the other, and the question is not whether goods are related to services. Rather Applicant's and Registrant's marks identify only services. *Cf. St. Helena Hosp.*, 113 USPQ2d at 1087 (applicant's mark TAKETEN for, inter alia, health care services, and registrant's TAKE10! mark for "printed manuals, posters, stickers, activity cards and educational worksheets dealing with physical activity and physical fitness" found not related; where "the relatedness of the goods and services is obscure or less evident, the PTO will need to show 'something more' than the mere fact that the goods and services are 'used together.'") (citation omitted); *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003) ("*Jacobs [v. Int'l Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641, 642 (CCPA 1982)] provides that 'to establish likelihood of confusion a party must show **something more** than that similar or even identical marks are used for food products and for restaurant services.' *Id.* (emphasis added).").

Nor do we find persuasive Applicant's argument that the identified services are not related because they fall in different International Classes. 6 TTABVUE 8. To the

contrary, [c]lassification is solely for the ‘convenience of the Patent and Trademark Office administration, 15 U.S.C. §1112, and ‘is wholly irrelevant to the issue of registrability under section 1052(d), which makes no reference to classification.” *Detroit Ath. Co.*, 128 USPQ2d at 1051 (citing *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993)).

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

C. Similarity or Dissimilarity of Trade Channels

As to the channels of trade and classes of purchasers under the third *DuPont* factor, we likewise must base our likelihood of confusion determination on the services as they are identified in the application and cited registration. *See Octocom*, 16 USPQ2d at 1787 (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of [services] set forth in the application regardless of what the record may reveal as to the ... particular channels of trade or the class of purchasers to which the sales of [services] are directed.”). Because the identification of services in the application and cited registration contain no limitations as to channels of trade and classes of purchasers, it is presumed that the retail store services featuring packaged coffee identified in the application and the restaurant services featuring coffee identified in the cited registration move in all channels of trade normal for those services, and that they are available to all usual classes of purchasers for those services, including members of the general public. *See Stone Lion*, 110 USPQ2d at 1161; *see also Coach Servs.*, 101 USPQ2d at 1723 (absent limitation, “goods are presumed to travel in all normal

channels ... for the relevant goods.”); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). As neither the application nor the cited registration contains limitations as to the channels of trade or classes of purchasers, and in light of the above-discussed evidence of third party commercial websites showing companies such as Black Acres Roastery, Zeke’s Coffee, Starbucks and Dunkin’ offering retail store services featuring packaged coffee as well as restaurant services featuring coffee bearing the companies’ names advertised together, we find the channels of trade and classes of purchasers to be the same. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012); *see also In re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (deeming channels of trade and classes of purchasers to be the same for jewelry and jewelry stores when the application and registration contain no limitations).

The third *DuPont* factor also supports a finding of a likelihood of confusion.

#### D. Conclusion

The marks are similar, the identified services are related and their trade channels overlap. Accordingly, the first, second and third *DuPont* factors weigh in favor of a finding of likelihood of confusion. No *DuPont* factor weighs against such a finding.

Having weighed and balanced the *DuPont* factors for which there is evidence and argument, *Charger Ventures*, 2023 USPQ2d 451, at \*7, we conclude confusion is likely between Applicant’s mark HOLLYWOOD COFFEE CO. and Registrant’s mark HOLLYWOOD CAFÉ when the marks are used in association with their respective identified services.

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