

This Opinion Is Not a
Precedent of the TTAB

Mailed: December 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Innocent Health LTD

Serial No. 97528277

Marek Krizka and Rohini Pandit, of Sparring Legal LLP, for Innocent Health LTD

Scott Bibb, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before English, Thurmon and Elgin, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Innocent Health LTD (“Applicant”) seeks registration on the Principal Register of the mark NOVOMINS NUTRITION (NUTRITION disclaimed) in standard characters, for “Food supplements in the form of gummies for general health and well-being; Gummy vitamins,” in International Class 5.¹ The Trademark Examining

¹ Application Serial No. 97528277 was filed on August 1, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use in September, 2019 and first use in commerce in February, 2021. Because no specific date of first use in commerce was asserted in the application, we treat the asserted first use in commerce date as February 28, 2021, the last day of the month given in the application. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 903.06 (Nov. 2025) (“When a month and year are given without a specified day, the date presumed for purposes of examination is the last day of the month.”).

Citations to briefs refer to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number; the number(s) following

Attorney issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion, based on the registered standard character mark NOVOMIN for “Food supplements; Nutritional supplements,” in International Class 5.² The appeal is briefed and ready for final decision. We affirm the refusal to register.

I. Section 2(d) – Applicable Law

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a 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 Indus., Inc.*, 575 U.S. 138 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1318 (Fed. Cir. 2018). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods or services, but also to protect the registrant from adverse

TTABVUE refer to the page number(s) of that particular docket entry. See *Turdin v. Trilobite, Ltd.*, 2014 TTAB LEXIS 17, *6 n.6. Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system.

² Registration No. 3381669, issued February 12, 2008. The Registration has been renewed.

commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973). Varying weights 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, 1356 (Fed. Cir. 2011); *Shell Oil*, 992 F.2d at 1206 (“the 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 similarities between the goods or services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 1342 (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 and differences in the marks.”).

II. Likelihood of Confusion – Analysis

Applicant and the Trademark Examining Attorney presented arguments under *DuPont* factors one, two, three, four, six and eight. We address these factors in turn below.

A. Similarity of the Marks

To evaluate the similarity of the marks under the first *DuPont* factor, we consider the marks in their entireties as to appearance, sound, connotation and commercial impression. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (citing *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s LLC*, 2018 TTAB LEXIS 170, *13 (quoting *In re Davia*, 2014 TTAB LEXIS 214, *4), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation 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.” *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.” *In re i.am.symbolic, llc*, (Ser. No. 85916778) 2018 TTAB LEXIS 281, *11.

Applicant’s mark and the cited mark are similar, with the only differences being that Applicant uses a plural version of the term “NOVOMINS” and adds the descriptive term “NUTRITION.” These two distinctions are of little significance, as consumers are likely to focus on and recall the term “novomin” from both marks. As

to Applicant's mark, it is often observed that the first element of a mark tends to play a dominant role in the mark's commercial impression. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (finding "the identity of the marks' two initial words is particularly significant because consumers typically notice those words first"); *Palm Bay Imps.*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, 1988 TTAB LEXIS 60, *8 ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). In the context of this appeal, consumers' tendency to focus on and recall the first part of a trademark means the added word "nutrition" in Applicant's mark provides little distinction from the cited mark NOVOMIN.

Applicant argues that the Trademark Examining Attorney placed too little emphasis on Applicant's mark as a whole, which includes the word "nutrition" as the second element of the mark. 8 TTABVUE 7. While it is true that consumers will see the full mark, it is also true that "in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060 (Fed. Cir. 1985) (quoted by *Detroit Athletic Co.*, 903 F.3d at 1305).

The word "nutrition" is descriptive of Applicant's goods, as evidenced by Applicant's disclaimer of this term. Such a term does not distinguish one source of nutritional goods from another, and for that reason, consumers are much less likely

to recall or rely on the word “nutrition” to identify and distinguish Applicant’s goods from those of others. The Trademark Examining Attorney was correct to place less weight on this term in Applicant’s mark, because consumers are likely to do the same.

Applicant also argues that the plural version of NOVOMINS as used in its mark is significantly different from the singular NOVOMIN in the cited mark. 8 TTABVue 6. The distinction between a singular and plural version of a word “is not sufficient to prevent likely confusion.” *In re Wenger Corp.*, 2022 TTAB LEXIS 48, *4. *See also Wilson v. Delaunay*, 245 F.2d 877, 878 (CCPA 1957) (“there is no material difference, in a trademark sense, between the singular and plural forms of the word ‘Zombie’ and they will therefore be regarded here as the same mark”).

There is no evidence of any specific meaning for either mark, and we find that consumers are likely to attribute the same meaning to both marks. We further find that both marks are likely to create the same commercial impression in the market. The marks are similar in every respect and this fact increases the likelihood of confusion.

B. Similarity of the Goods

We evaluate the second *DuPont* factor based on the goods identified in the Application and the Cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Comput. Servs., Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any goods or services identified in a particular class in an application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*,

(Pro. No. 92063808) 2019 TTAB LEXIS 347, *18; *In re Aquamar, Inc.*, (Ser. No. 85861533) 2015 TTAB LEXIS 178, *9 n.5. In addition, the goods need only be sufficiently related that a relevant consumer would be likely to assume, upon encountering goods marketed under the marks at issue, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, (Pro. No. 91158891) 2007 TTAB LEXIS 50, *25-26.

The Cited Registration identifies “Food supplements; Nutritional supplements.” Applicant identifies “Food supplements in the form of gummies for general health and well-being; Gummy vitamins,” which is a narrower form of the “food supplements” recited in the cited Registration. In other words, Applicant’s goods are fully subsumed by the “food supplements” identified in the cited Registration. The goods are, therefore, identical for the purposes of our analysis. *See In re Hughes Furniture Inds.*, 2015 TTAB LEXIS 65, *10 (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”); *In re Jump Designs LLC*, 2006 TTAB LEXIS 209, *14-15 (same).

Applicant argues that the goods are distinct in the market. 8 TTABVUE 8-9. This argument ignores the rule stated above that we must limit our analysis to the identifications in the Application and cited Registration. *Stone Lion*, 746 F.3d at 1323. Marketplace limitations on the goods that are not reflected by the identifications are irrelevant to the likelihood of confusion analysis in the context of

an application to register a mark. The goods are legally identical and that increases the likelihood of confusion.

C. Trade Channels

The cited Registration broadly identifies “food supplements” with no restrictions or limitations. We, therefore, must presume these goods flow through all the normal trade channels for “food supplements.”

Where the goods in the application at issue and/or in the cited registration are broadly identified as to their nature and type, such that there is an absence of any restrictions as to the channels of trade and no limitation as to the classes of purchasers, it is presumed that in scope the identification of goods encompasses not only all the goods of the nature and type described therein, but that the identified goods are offered in all channels of trade which would be normal therefor, and that they would be purchased by all potential buyers thereof.

In re Jump Designs, 2006 TTAB LEXIS at *13-14; *see also In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“it is well established that, ‘absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers’”) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268 (Fed. Cir. 2002)). Because the Application identifies goods that overlap with those identified in the cited Registration, as we explained above, this presumption applies with equal force to Applicant’s goods. The trade channels, therefore, are presumed to overlap.

Applicant argues that the trade channels differ in the market, with Registrant allegedly selling its goods only through its own website and on amazon.com. 8 TTABVUE 9-10. As we noted with respect to the comparison of the goods, this

argument ignores the well-established rule that we must evaluate the trade channels based on the identification of goods in the Application and cited Registration. As there is no limitation in the cited Registration, we are compelled to presume that Registrant's goods flow through all the normal trade channels for "food supplements." The trade channels, therefore, overlap, making confusion more likely.

D. Customers and Purchasing Care

The fourth *DuPont* factor considers the likely care exercised by relevant consumers. *DuPont*, 476 F.2d at 1361 ("The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing"). Applicant argues that the customers of these goods are careful, and further, that the consumers do not overlap. 8 TTABVUE 9. These arguments again ignore the identifications in the Application and cited Registration, which contain no limitations as to consumers or method of marketing the goods. The category of "food supplements" is quite broad and there is no evidence that consumers of such goods consistently exercise care when purchasing these goods.

At best, we find this is a mixed market, with some consumers making careful purchasing decisions and some making impulse decisions. In this context, we are required to base our decision "on the least sophisticated potential purchasers." *Stone Lion*, 746 F.3d at 1325. We lack sufficient evidence to identify the likely purchasing practices of the "least sophisticated potential purchasers" of "food supplements," and therefore treat the fourth *DuPont* factor as neutral.

E. The Strength or Weakness of the Cited Mark

Applicant argues that the cited mark is weak because there is evidence of third-party registrations of “NOVOMIM-formative marks.” 8 TTABVue 11-14. To support this argument, Applicant identifies three registrations by third parties for similar goods. The existence of three registrations is insufficient to show any pattern of use or registration that would provide us with dictionary-like evidence of the meaning of the term “novomin” within the market. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338-39 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.2d 1363, 1373 (Fed. Cir. 2015).

In addition, the three third-party marks Applicant identifies differ from the cited mark. The marks are NOVOMIND, NOVOMINO, and NOVOS (plus design) for dietary or nutritional supplements. The NOVOS mark is too different to provide meaningful information on what the term NOVOMIN means to relevant consumers, leaving only two third-party registrations of somewhat similar marks for similar goods. This third-party evidence falls far short of what is needed to show conceptual weakness of the cited NOVOMIN mark.

We also note that the cited mark was registered without a showing of acquired distinctiveness, meaning the NOVOMIN mark is presumed to be inherently distinctive. *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 146 (Fed. Cir. 2021) (a mark registered on the Principal Register without a showing of acquired distinctiveness is presumed to be inherently distinctive). We find the cited

mark is arbitrary for “food supplements” and is a conceptually strong mark, yet another fact that increases the likelihood of confusion.

F. The Absence of Actual Confusion Evidence

Applicant argues that the marks have “coexist[ed] in the US marketplace for over four years without any known instances of actual confusion.” 8 TTABVue 10. This argument is somewhat misplaced, because an appeal of a refusal to register a mark is an ex parte proceeding. That means the owner of the cited Registration is not a party and we simply cannot know whether the Registrant has evidence of actual confusion. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (“uncorroborated statements of no known instances of actual confusion are of little evidentiary value” in an ex parte appeal). In addition, we have insufficient evidence of the kind of marketplace circumstances that can lead to actual confusion. *In re Guild Mortg.*, 912 F.3d at 1380-81 (suggesting that “evidence of concurrent use of the two marks for a particularly long period of time—over 40 years—in which the two businesses operated in the same geographic market—southern California—without any evidence of actual confusion” may be probative under the eighth *DuPont* factor, even in an ex parte appeal). For these reasons, we place no weight on the eighth *DuPont* factor, which considers the probative value of evidence of a lack of actual confusion.

G. Conclusion: Weighing the Factors

The marks are similar and the goods are legally identical. The trade channels overlap. The cited mark is conceptually strong. There is insufficient evidence to make

a finding under the fourth *DuPont* factor, and the lack of actual confusion evidence, considered under the eighth *DuPont* factor, is not persuasive in this appeal. In short, the four *DuPont* factors that are probative (the first, second, third and sixth factors) all point toward a likelihood of confusion. The first two *DuPont* factors—the similarity of the marks and the similarity of the goods—weigh very heavily in this appeal. Confusion is likely and the Section 2(d) refusal must be affirmed.

Decision: The Section 2(d) refusal is affirmed.