

This Opinion is not a
Precedent of the TTAB

Mailed: April 4, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re New Rubber Technologies Holdings, Inc.
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Serial No. 97577543
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Colleen F. Goss of Lippes Mathias LLP,
for New Rubber Technologies Holdings, Inc.

Mildred Black, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

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Before Goodman, English and Elgin,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

New Rubber Technologies Holdings, Inc. (“Applicant”) seeks registration on the

REVIVER[✓]ITE Inside!

Principal Register of the mark

for

Rubber, thermoplastic, and thermoplastic elastomer flooring; flooring made of rubber, devulcanized rubber, recycled rubber and rubber alternatives in International Class 19; and

Floor mats; and floor mats made of rubber, devulcanized rubber, recycled rubber, thermoplastics, thermoplastic

elastomers, and rubber alternatives in International Class
27.¹

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 it is likely to cause confusion with the standard-character mark REVIVE, registered on the Principal Register, for "Vinyl floor coverings; Decorative slip resistant floor covering in sheet form" in International Class 27.²

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We reverse the refusal to register as to both classes of goods.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the

¹ Application Ser. No. 97577543 was filed on September 2, 2022, based upon applicant's assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The description of the mark states: "The mark consists of the word REVIVERITE in capital letters with a check mark over the second letter 'I' followed by the word INSIDE with the letter 'I' capitalized and the remainder of the word in lower case letters all followed by an exclamation mark." Color is not claimed as a feature of the mark.

The application initially had additional classes 17 and 40 which were not subject to refusal and were subject to a request to divide.

The citation form in this opinion is in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03(a) (2024). For decisions of the Board, this order employs citation to the Lexis database.

Page references to the application record are to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 6 TTABVUE; the Examining Attorney's brief is at 8 TTABVUE.

² Reg. No. 5337213 issued November 14, 2017. Section 8 accepted and Section 15 acknowledged.

goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *2 (TTAB 2019).

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

A. Similarity or Dissimilarity of the Goods and Trade Channels

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods as described in an application or registration.”³ *DuPont*, 476 F.2d at 1361.

³ Applicant did not address this *DuPont* factor in its brief, “apparently conceding the issue.” *In re Morinaga Nyugyo K.K.*, 2016 TTAB LEXIS 448, *3 (TTAB 2016).

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

In determining the similarity or dissimilarity of the goods, we must focus on the goods as they are identified in the involved application and cited registration. *See In re i.am.symbolic, llc*, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application or registration. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 2007 TTAB LEXIS 58, at *28-29 (TTAB 2007)).

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

Evidence of relatedness also might include news articles and/or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant's goods (or similar goods) and the goods (or similar goods) listed in the cited registration. *See, e.g., In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *5; *In re Davia*, 2014 TTAB LEXIS 214, at *19 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

Applicant's goods are "Rubber, thermoplastic, and thermoplastic elastomer flooring; flooring made of rubber, devulcanized rubber, recycled rubber and rubber alternatives" (Cl. 19) and "Floor mats; and floor mats made of rubber, devulcanized rubber, recycled rubber, thermoplastics, thermoplastic elastomers, and rubber alternatives" (Cl. 27). Registrant's goods are "Vinyl floor coverings; Decorative slip resistant floor covering in sheet form."

The Examining Attorney provided internet evidence indicating that companies that offer rubber flooring (Applicant's Cl. 19 goods) also offer vinyl flooring (Registrant's goods): (Roppe (roppe.com) (December 26, 2023 Office Action at TSDR at TSDR 3), (Flexco (flexcoflooring.com) (*Id.* at TSDR 5-6), Harvey Maria (harveymaria.com)⁴ (*Id.* at TSDR 7-8). The internet evidence also shows dealers that

⁴ This website is in the United Kingdom but it is likely consumers will encounter the website in searching for flooring. The website is in English, with a.com TLD, and indicates that "[a]

offer rubber flooring (Applicant's Cl. 19 goods), floor mats (Applicant's Cl. 27 goods) and vinyl flooring (Registrant's goods). Commercial Mats and Rubber.com (commercialmatsandrubber.com) offers rubber flooring (Cl. 19), floor mats (Cl. 27) and vinyl flooring (Registrant's goods) (*Id.* at TSDR 2); Floor Mat Company.com (floormatcompany.com) offers rubber flooring as a category on the webpage (Cl. 19), floor mats as a category on the webpage (Cl. 27) and vinyl flooring (Registrant's goods) (*Id.* at TSDR 4). The internet evidence submitted by the Examining Attorney is relevant to the relatedness of Applicant's Class 19 and Class 27 goods and Registrant's goods. *In re Davey Prods. Pty*, 2009 TTAB LEXIS 524, at *14-15 (TTAB 2009).

The Examining Attorney also provided third-party registration evidence (December 26, 2023 Office Action at TSDR 9-28). Third-party registrations are relevant and probative to our relatedness determination to the extent that they suggest the listed goods are of a type that may emanate from a single source. *In re Albert Trostel & Sons Co.*, 1993 TTAB LEXIS 36, at *7 (TTAB 1993).

The Examining Attorney provided nine use-based active registrations showing third parties offering floor mats, including rubber mats, (Cl. 27 goods) and either vinyl flooring and/or decorative slip resistant flooring (registrant's goods), under the same mark: (Reg. No. 5780986, Reg. No. 7193347, Reg. No. 6113787, Reg. No.

selection of Harvey Maria designs are available to order in the USA." We find this website probative. *See In re Well Living Lab Inc.*, 2017 TTAB LEXIS 156, at *12 n.10 (TTAB 2017) (finding Canadian websites probative of United States consumers' understanding of the term "well living" as the websites were in English, promoted health and wellness, and had a .com TLD).

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6559789, Reg. No. 7195356, Reg. No. 7076044, Reg. No. 6294818, Reg. No. 6777554, and Reg. No. 6995099). December 26, 2023 Office Action at TSDR 9, 10, 12, 14, 15, 17, 19, 26, 27.

The Examining Attorney provided an additional eight use-based active third-party registrations showing the offering of rubber flooring (Cl. 19 goods) and vinyl flooring and/or decorative slip resistant floor covering in sheet form (registrant's goods) under the same mark: (Reg. No. 4926167, Reg. No. 4906188, Reg. No. 5324835, Reg. No. 5138823, Reg. No. 3916809, Reg. No. 5224238, Reg. No. 4352950, and Reg. No. 5326692). *Id.* at TSDR 11, 13, 16, 18, 20, 22, 25, 28.

The Examining Attorney provided two use-based active third-party registrations showing the offering of rubber flooring, floor mats, and/or vinyl flooring and decorative slip resistant floor covering under the same mark: (Reg. No. 4593887 and Reg. No. 5830015). *Id.* at TSDR 21 and 23.

The third-party registration evidence shows that companies that offer floor mats or rubber floor mats also offer vinyl flooring and/or decorative slip resistant floor coverings under the same mark, and that companies that offer rubber flooring also offer vinyl flooring and/or decorative slip resistant floor coverings under the same mark. The internet evidence shows that dealers and manufacturers offer rubber flooring and vinyl flooring and some dealers offer rubber flooring, floor mats, and vinyl flooring.

We find that Applicant's goods, namely, rubber flooring (Cl. 19) and floor mats, which include rubber mats (Cl. 27) are related to Registrant's goods, namely, vinyl flooring and decorative slip resistant floor coverings.

The internet evidence also supports that rubber flooring, floor mats and vinyl flooring are sold through the same trade channels, namely flooring companies on the internet.

The second and third *DuPont* factors weigh in favor of likelihood of confusion.

B. Strength of the Cited Mark

The sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods,” *DuPont*, 476 F.2d at 1361, “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) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005)). There are two types of strength: conceptual and commercial.⁵ *Id.* (citing *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010)). The strength of the cited mark affects the scope of protection to which it is entitled. Third-party use evidence bears on the strength or weakness of a mark. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015) (citing *Palm Bay Imps.*, 396 F.3d at 1373). Third-party registration evidence for marks “on similar goods can bear on a mark’s conceptual strength.” *Spireon*, 71 F.4th 1363 (citing *Juice Generation*, 794 F.3d at 1339).

⁵ As is normally the case in ex parte proceedings, the fifth *DuPont* factor is neutral. See *In re Thomas*, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

Applicant challenges the conceptual and commercial strength of the cited mark by arguing that “people are accustomed to seeing ‘REVIV’ formative marks in many different variations as a trademark or brand identifier with respect to flooring materials and related services and have no problem distinguishing among the sources of the products.” Applicant’s brief 6 TTABVUE 8. Applicant also argues that REVIV formative marks are diluted commercially. *Id.*

We take judicial notice of the dictionary definitions for “revive” and “revival.”⁶ See *In re Guild Mortg.*, 2020 TTAB LEXIS 17, at *6 (TTAB 2020) (taking judicial notice of the dictionary definition of the word GUILD in connection with analyzing conceptual weakness); see also *Ferro Corp. v. Martin-Marietta Corp.*, 1969 TTAB LEXIS 190, at *12-13 (TTAB 1969) (in connection with opposer’s ELECTRO mark and the sixth *DuPont* factor, the Board considered evidence of variants LECT, LECTRO, ELECTRO, ELECTRA (third-party registration evidence), ELECTRO, ELECTRA, ELECTRIC, ELECTRICAL (trade name evidence), and dictionary definition for ELECTRO).

Revive is defined as “to return to consciousness or life : become active or flourishing again” or “to restore from a depressed, inactive, or unused state : bring back.” Revival is defined as “an act or instance of reviving : the state of being revived.” (MERRIAM-WEBSTER DICTIONARY) (merriam-webster.com accessed March 28, 2025).

⁶ The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed form or regular fixed editions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 1982 TTAB LEXIS 146, at *7 (TTAB 1982), *aff’d*, 703 F.2d 1372 (Fed. Cir. 1983); *In re Red Bull GmbH*, 2006 TTAB LEXIS 136, at *7 (TTAB 2006).

The most probative third-party registrations⁷ are the following:

- REVIVAL: carpets, rugs, excluding vinyl carpet and rugs (December 5, 2023 Response to Office Action at TSDR 19)
- CALIFORNIA REVIVAL: wall and floor tiles in a variety of materials (*Id.* at 13)
- REVIVAL RUGS: carpets, rugs (*Id.* at 17)
- MODERN REVIVAL: vinyl flooring, vinyl floor tiles (*Id.* at 12)

Although three of the above-listed registrations include additional terms, we find the component terms REVIVE and REVIVAL in these third-party registrations still suggest “bring back to life” as a way to refresh or renew a property with new flooring materials, and that the REVIVE/REVIVAL portion of these marks has the same connotation as the cited mark REVIVE.

In addition, Applicant has put into the record REVIVE/REVIVE formative or REVIVAL active third-party registrations (some with additional terms) which relate to other building materials (e.g., window casements, nonmetal windows, non-paint coating preparation for surface renewal). December 5, 2023 Response to Office Action at TSDR 18, 20, and 32. These registrations reflect use in the building materials

⁷ Some of the submitted third-party registrations and applications containing the term REVIVAL or REVIVE are cancelled or abandoned. Expired registrations are of no value; applications, abandoned or subsisting, are evidence only of their filing. *In re Kysela Pere et Fils Ltd.*, 2011 TTAB LEXIS 70, at *7 (TTAB 2011). Some of the submitted third-party registrations are duplicates. Applicant also submitted a list of registrations. This list does not make the listed registrations of record and has little, if any, probative value because Applicant did not include the actual goods or services associated with the respective registrations in the list. *In re 1st USA Realty Prof's, Inc.*, 2007 TTAB LEXIS 73, at *4 (TTAB 2007). Applicant also submitted two Section 66(a) registrations owned by the same entity. These registrations have no probative value because they are not based on use in commerce but also because they do not identify related goods. *Id.* at *5 (registrations not based on use in commerce have no probative value in showing relatedness of the services).

industry, of REVIVE or REVIVAL (and formatives) in connection with products that can be used to restore or renew properties.

Applicant also submitted marketplace use of REVIVE and REVIVAL (and formatives) in connection with flooring, floor care products and flooring restoration and cleaning services.

Flooring products incorporating REVIVE or REVIVAL:

- Revive Crest vinyl plank flooring (December 5, 2023 Response to Office Action at TSDR 65)
- Revive vinyl floor (*Id.* at 70)
- Soho Studio Revive porcelain tile (*Id.* at 58)
- Revival walnut herringbone engineered hardwood flooring (*Id.* at 59)
- Revival modular carpet tile - Awakening (*Id.* at 60)
- Bravada Hardwood Revival European white oak flooring (*Id.* at 61)
- Revival luxury vinyl (*Id.* at 64)
- Revival carpet tile (*Id.* at 47)
- Charm Revival carpet (*Id.* at 46)
- Hawk Everstrand Revival carpet (*Id.* at 48)
- Platinum Reviver collection, vinyl flooring (*Id.* at 71)

Floor care companies and those providing flooring products:

- Revival Flooring (*Id.* at 62) (business offering hardwood flooring and hardwood refinishing)
- Revive Floor Care (December 5, 2023 Response to Office Action at TSDR 57) (business offering hardwood floor rejuvenation)
- Revive Your Carpet.com (*Id.* at 49) (business offering carpet cleaning, tile and grout cleaning)

These uses are probative because one company is selling new flooring to consumers to renew one's property, while two companies offer to renew flooring with more economical solutions of hardwood refinishing and carpet cleaning, rather than replacement.

Other uses provided by Applicant are for flooring cleaner, or flooring products to revive, shine, or rejuvenate flooring:

- Revive floor cleaner (December 5, 2023 Response to Office Action at TSDR 50)
- Revive Plus SC Maintainer/Rejuvenator (*Id.* at 51)
- RSP Revive Cleaner (*Id.* at 52)
- Pledge Revive it Floor Gloss (*Id.* at 54)
- MinWax Hardwood Floor Revival (*Id.* at 55)
- Hope's Floor Revive Floor Shine (*Id.* at 56)

These uses are less probative because they relate to floor cleaners or floor restoration products rather than replacement flooring but consumers might opt for cleaning or restoration products rather than replacement flooring as a more economical solution.

The eleven uses of REVIVE/REVIVAL (and formatives) with different types of flooring are probative of commercial weakness, although this is a more modest showing than some other Board cases. *In re FabFitFun, Inc.*, 2018 TTAB LEXIS 297, at *13-14 (finding ten uses of SMOKIN' [SMOKING] HOT "reflects a more modest amount of [third-party use] evidence" but finding the evidence probative of some weakness of the term SMOKIN' [SMOKING] HOT) (citations omitted).

The uses of REVIVE/REVIVAL (and formatives) for companies that provide flooring and floor care services and the uses with floor care preparations are less persuasive but still have probative value supporting that REVIVE/REVIVAL has commercial weakness for flooring, suggesting a way to refresh or renew existing flooring.

Considering the evidence as a whole and the dictionary definitions, we find that the shared term REVIVE/REVIVAL is somewhat weak conceptually as used with

flooring to suggest restoration, renewal, refreshing or bringing back to life. We also find that consumers have been exposed to third-party uses of REVIVE/REVIVAL (and formatives) in connection with flooring goods and floor care products and services. Overall, we find the evidence suggests that consumers of flooring will look not just to the REVIVE/REVIVAL portion of marks containing the term to identify and distinguish the source, but other parts of the marks.

On this record we find that REVIVE is somewhat weak and is entitled to slightly less than the normal scope of protection. The sixth *DuPont* factor weighs slightly against likelihood of confusion.

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Palm Bay Imps.*, 396 F.3d at 1371. Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at *4 (citations omitted).

The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012).

Applicant's mark is **REVIVER[✓]ITE Inside!** and Registrant's mark is REVIVE.

Comparing the appearance and sound of Applicant's mark to the cited mark, they are similar to the extent that the word REVIVE appears in both, and dissimilar to the extent that Applicant's mark includes the additional term RITE with a check mark and the term INSIDE with an exclamation mark which also emphasizes the term RITE in the composite mark. Although both marks share the term REVIVE, considering that the term REVIVE has some conceptual and commercial weakness, the marks are different by virtue of the additional terms and visual elements in Applicant's mark.⁸ Overall, the marks are dissimilar in appearance and sound.

As to connotation of the cited mark, as previously indicated, REVIVE is defined as "to return to consciousness or life : become active or flourishing again" or "to restore from a depressed, inactive, or unused state : bring back." RITE in Applicant's mark is the phonetic equivalent of RIGHT which is defined as "being in a correct or proper state" or "suitable or appropriate." MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed March 28, 2025). The check mark over the letter "i" in RITE is defined as "a mark that you make beside a name or item on a list to show that it is correct or that it has been dealt with." CAMBRIDGE DICTIONARY (dictionary/cambridge.org/us, accessed March 28, 2025). INSIDE is defined as "an interior or internal part or place : the part within" or "an inner side or surface." MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed March 28, 2025).

⁸ The addition of the punctuation in Applicant's mark does not create a significant difference.

The exclamation point in the mark is used “to indicate forceful utterance or strong feeling.” MERRIAM-WEBSTER DICTIONARY (merriam-webster.com accessed March 28, 2025). See *Knight Textile Corp. v. Jones Inv. Co.*, 2005 TTAB LEXIS 250, at *9 (TTAB 2005) (taking judicial notice of dictionary definition of “essentials” and its connotation in connection with the parties’ goods).

While REVIVE in Applicant’s mark, as in the cited mark, connotes some type of renewal, or bringing back to life, the additional wording RITE INSIDE yields a different connotation to the mark in its entirety as it indicates that the material inside which makes up the goods (e.g., devulcanized rubber and recycled rubber) was renewed or restored (i.e., recycled) in a proper or correct manner. The meaning of RITE is reinforced by the check mark, and the exclamation point at the end provides further emphasis to the additional terms in the mark. As a result, even though the marks share the words REVIVE, the additional terms in Applicant’s mark as a whole yield a different connotation and commercial impression from the cited mark as used in connection with the goods. See *In re P. Ferrero & C.S.p.A.*, 479 F.2d 1395, 1397 (CCPA 1973) (TIC TAC and TIC TAC TOE dissimilar); *Sock It to Me v. Fan*, 2020 TTAB LEXIS 201, at *41 (TTAB 2020) (SOCK IT TO ME and SOCK IT UP dissimilar; dissimilarity in the marks connotation and commercial impression outweighs shared wording); *In re FabFitFun, Inc.*, 2018 TTAB LEXIS 297, at *23 (I’M SMOKING HOT and SMOKIN’ HOT SHOWTIME dissimilar); *Original Appalachian Artworks, Inc. v. Streeter*, 1987 TTAB LEXIS 45, at *3 (TTAB 1987) (although CABBAGE PATCH KIDS and CORN PATCH PIGS share one word in common, they are dissimilar in

appearance, pronunciation and connotation; one connotes pigs and one connotes children).

We find Applicant's and Registrant's marks are dissimilar in appearance, sound, connotation and commercial impression.

The first *DuPont* factor weighs against likelihood of confusion.

D. Conclusion as to Likelihood of Confusion

The second and third *DuPont* factors weigh in favor of likelihood of confusion, and the sixth and first *DuPont* factors weigh against likelihood of confusion. Because of the overall differences between the marks and the weakness of the term REVIVE shared by them, we find that confusion is not likely between Applicant's mark

REVIVERITE Inside! and the mark REVIVE in the cited registration.

Decision: The refusal to register Applicant's mark **REVIVERITE Inside!** is reversed as to Classes 19 and 27.