

This Opinion is Not a  
Precedent of the TTAB

Mailed: September 30, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board  
—

*In re Mulligan Golf Gift Store LLC*  
—

Serial No. 97669290  
—

John R. Garber, Esq.,  
for Mulligan Golf Gift Store LLC.

Brian J. Collis, Trademark Examining Attorney, Law Office 129,  
Pamela Y. Willis, Managing Attorney.

—  
Before Wellington, Lykos and Lavache,  
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Mulligan Golf Gift Store LLC (“Applicant”) seeks to register on the Principal  
Register the composite mark displayed below



for “Retail store services, featuring sporting goods, novelties, souvenirs, office gifts, golf equipment, apparel and accessories, custom logo golf balls, home office decorations, books, games, pranks and novelty gifts” in International Class 35.<sup>1</sup> Applicant has disclaimed GOLF GIFT STORE EST. 2021 apart from the mark as shown. The description of the mark is as follows:

The mark consists of the wording “MULLIGAN” in white set above a design of two golf clubs and a golf ball on a tee in gold. The wording “EST. 2021” appears to the left and right of the golf equipment design with the wording “GOLF” set above the wording “GIFT STORE” in white. Two white circles appear on either side of the word “GOLF”. The wording “HOOLIGAN” appears in white set below the wording “GOLF GIFT STORE”. The wording and designs are all set on a black circle with a gold circle around the border.

The colors black, white and gold are claimed as features of the mark.

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the registered standard character mark MULLIGANS for “Provision of an on-line marketplace for buyers and sellers of golf equipment” in International Class 35, that it is likely to cause confusion or mistake or to deceive.<sup>2</sup>

---

<sup>1</sup> Application Serial No. 97669290, filed November 9, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging November 2, 2022 as the date of first use anywhere and in commerce.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. Citations to the record throughout the decision include references to TTABVue, the Board’s online docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

<sup>2</sup> Registration No. 5824150, registered August 6, 2019 on the Principal Register.

Applicant timely filed a notice of appeal, and request for reconsideration which was denied. The appeal is fully briefed.<sup>3</sup> For the reasons explained below, we reverse the refusal to register.

I. Likelihood of Confusion under Trademark Act Section 2(d)

Section 2(d) of the Trademark Act prohibits the registration of a mark that:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

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, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In making our determination, the Board has considered each *DuPont*

---

<sup>3</sup> Applicant’s main appeal brief does not comply with Trademark Rule 2.126(a)(1), 37 C.F.R. § 2.126(a)(1) because it is single, not double, spaced. However, even if the brief were double-spaced, it would not exceed the 25-page limitation proscribed in Trademark Rule 2.142(b)(2), 37 C.F.R. § 2.142(b)(2). For this reason, we have exercised our discretion to consider Applicant’s main brief.

On August 16, 2024, Applicant filed a “Supplemental Brief” following full briefing of the appeal. Insofar as Applicant did not request written permission from the Board to file a supplemental brief, Applicant’s submission has been given no consideration. See *In re Consumer Protection Firm PLLC*, 2021 USPQ2d 238, at \*2 n.2 (TTAB 2021) (declining to consider applicant’s supplemental brief because such a brief is “not permitted unless authorized by the Board”); see also TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 1203.01 (2024) (“The Board has the discretion to permit supplemental briefing when appropriate. Absent a Board order, however, neither an applicant nor an examining attorney may file further briefs after the applicant files its reply.”).

factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

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, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil*, 26 USPQ2d at 1688 (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). “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, 177 USPQ 386, 387 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see also 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 and differences in the

marks.”). These factors, and the others, are discussed below.

A. Strength or Weakness of the Cited Mark

Because it affects the scope of protection to which it is entitled, we commence by addressing the strength or weakness of the cited mark MULLIGANS. The sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods [or services],’ *DuPont*, 177 USPQ at 567, [ ] is a measure of the extent to which other marks weaken the assessed mark.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 2023 USPQ2d 737, at \*4 (Fed. Cir. 2023) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)). This *DuPont* factor allows an applicant in an ex parte appeal to contract the scope of protection of a cited mark by adducing evidence of conceptual and commercial weakness.

“[T]he strength of a mark is not a binary factor” and “varies along a spectrum from very strong to very weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (internal citations omitted). “The weaker [the cited] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Id.* at 1676 (internal citations omitted).

In determining the strength of a cited mark, we consider both its inherent or conceptual strength, based on the nature of the mark itself, and, if there is evidence in the record of marketplace recognition of the mark, its commercial strength. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010)

“A mark’s strength is measured both by its conceptual strength ... and its marketplace strength ...”); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006).

Conceptual or inherent strength is a measure of a mark’s distinctiveness. *Chippendales*, 96 USPQ2d at 1686. Distinctiveness is “often classified in categories of generally increasing distinctiveness[:] ... (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768, 112 S. Ct. 2753 (1992). “Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts.” *Spireon*, 2023 USPQ2d 737, at \*4 (quoting *Juice Generation*, 115 USPQ2d at 1674); see also *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (“The weaker an opposer’s mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.”) (quoting *Juice Generation*, 115 USPQ2d at 1674).

“Commercial strength, on the other hand, is the marketplace recognition value of the mark.” *Spireon*, 2023 USPQ2d 737, at \*4 (internal citation and quotation marks omitted). Commercial strength is a question of “whether consumers in fact associate the . . . mark with a unique source.” *Id.* In this regard, the purpose of introducing

evidence of third-party marketplace use is “to show that customers have become so conditioned by a plethora of such similar marks that customers ‘have been educated to distinguish between different [such] marks on the bases of minute distinctions.’” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *Palm Bay*, 73 USPQ2d at 1694). *Accord Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation*, 115 USPQ2d at 1674.

“Extensive evidence of third-party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established.” *Jack Wolfskin*, 116 USPQ2d at 1136 (quoting *Juice Generation*, 115 USPQ2d at 1674). *Accord Spireon*, 2023 USPQ2d 737, at \*7.

1. Evidentiary Matter

In its October 30, 2023 Office Action response to the Office Action refusing registration under Section 2(d), Applicant argued under the sixth *DuPont* factor that the cited mark is “extremely weak and diluted as applied to golf goods and services and should be given only a very narrow scope of protection.”<sup>4</sup> In support thereof, Applicant referred to five (5) third-party registrations for “golf goods and services” either comprised solely of or incorporating the term MULLIGAN or the plural thereof:<sup>5</sup>

Registration No. 7133988 for the mark MULLIGANS  
ISLAND

Registration No. 6969911 for the mark MULLIGAN

---

<sup>4</sup> October 30, 2023 Response to Office Action at TSDR 7.

<sup>5</sup> October 30, 2023 Response to Office Action at TSDR 7.

Registration No. 7103092 for the mark MULLIGAN'S MUG

Registration No. 5421512 for the mark MULLIGAN'S GOLF GEAR

Registration No. 5320103 for the mark MULLIGAN and Design

Applicant further added in its appeal brief that MULLIGAN'S ISLAND, Registration No. 7133988 covers "clothing, namely, hats and caps;" MULLIGAN and Design of golfer, Registration No. 5320103 covers "clothing, namely, shirts, pants, jackets, footwear, hats and caps. mulligan's golf gear;" and that Registration No. 5421512 covers "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms."<sup>6</sup> Applicant did not make these third-party registrations properly of record because it did not attach copies of each registration to its October 30, 2023 Response to Office Action. *See In re Compania de Licores Internacionales S.A.*, 102 USPQ2d 1841, 1843 (TTAB 2012) (mere listing of third-party registrations in brief insufficient to make them of record); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1372 (TTAB 2006) (to make a third-party registration of record, either a copy of the paper USPTO record of the registration, or a copy taken from the electronic records of the Office, should be submitted); *see also* TBMP § 1208.02.

---

<sup>6</sup> Applicant's Main Brief, 4 TTABVUE 5. The Examining Attorney misstates the record in his appeal brief that "Applicant submitted three third-party registrations for marks including the component 'MULLIGAN' in Class 025 to show that this portion of the mark in the cited registration is inherently or conceptually weak and should not be afforded a broad scope of protection." Examining Attorney's Brief, 6 TTABVUE 8. To be clear, Applicant did not submit copies of these three registration during prosecution or with its appeal brief.



The Examining Attorney, in the Final Office Action dated November 30, 2023, failed to object and advise Applicant how to make the referenced third-party registrations properly of record. Instead, the Examining Attorney presented substantive arguments to rebut the registrations under the sixth *DuPont* factor, namely that the third-party registrations appear to be for goods or services in classes outside of International Class 35 and are predominantly different from or unrelated to those identified in the cited registration.<sup>7</sup> Then again, in his appeal brief, the Examining Attorney did not object to Applicant's provision of additional information regarding the identified goods for three of the third-party registrations, and reiterated his position that the third-party registrations fail to make the cited mark conceptually weak because Applicant did not submit any registrations pertaining to retail services but instead, "only submitted marks using the wording 'MULLIGAN' in classes outside of Class 035."<sup>8</sup>

Another failure to object by the Examining Attorney took place when Applicant referred to eight (8) websites incorporating MULLIGAN for "golf goods and services" as part of its brand name without making of record the websites properly of record in Applicant's December 27, 2003 Request for Reconsideration. Applicant referred to each website by name in the following manner:

MULLIGANGEAR.COM

MULLIGANSINDOOR.COM

---

<sup>7</sup> November 30, 2023 Final Office Action at TSDR 5.

<sup>8</sup> Examining Attorney's Brief, 6 TTABVUE 9.

MULLIGAN-GOLF.COM

MULLIGANGOLFSITE.COM

MULLIGANGOLFAPPAREL.COM

MULLIGANGEAR.COM

MRMULLIGAN.CO

MULLIGANSHOP.COM

In its appeal brief, Applicant added that “[i]n addition to these websites there are scores of sports restaurants and bars, miniature golf courses, driving ranges and other golf activities that contain the word MULLIGAN.”<sup>9</sup>

The Examining Attorney did not advise Applicant that in order to make the websites properly of record, the Applicant must provide the full address (URL) for the web page, and the date it was accessed or printed, either by the information displayed on the web page itself, or in the body of an applicant’s response. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1733 (TTAB 2018) (applying *Safer* to evidence submitted by examining attorneys and applicants in ex parte cases); *see also* TBMP § 1208.03. Instead, the Examining Attorney addressed the merits of the evidence of purported third-party marketplace uses in the January 26, 2024 Office Action denying Applicant’s Request for Reconsideration as well as in his appeal brief.<sup>10</sup> Specifically, the Examining Attorney argued both during prosecution and in his appeal brief that the third-party websites were irrelevant because “determining likelihood of confusion

---

<sup>9</sup> Applicant’s Appeal Brief, 6 TTABVUE 10.

<sup>10</sup> Examining Attorney’s Brief, 6 TTABVUE 9-10.

is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use.”<sup>11</sup>

If an examining attorney discusses the content of third-party registrations not properly made of record in an Office Action or appeal brief, without objecting to them, the registrations are considered for whatever probative value they may have. *See In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1594 n.40 (TTAB 2014) (objection waived where examining attorney, in a continuing refusal, failed to advise applicant that mere listing of third-party registrations was insufficient to make them of record); *In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012) (objection waived where examining attorney failed to advise applicant of the insufficiency of a list of third-party registration when it was proffered during examination), *aff'd*, 731 F.3d 1327 (Fed. Cir. 2013); *see also* TBMP § 1208.02. This same principle applies to the failure to object to the third-party website evidence. *I-Coat*, 126 USPQ2d at 1733; *see also* TBMP § 1208.03. As a result, we will consider the third-party registration and third-party website evidence as described by Applicant for whatever probative value it may have.

1. Conceptual Strength

First we address the third-party registration list and information presented as a challenge to the cited mark’s conceptual strength. Third-party registrations may be relevant, in the manner of dictionary definitions, “to prove that some segment of the

---

<sup>11</sup> January 26, 2024 Office Action denying Applicant’s Request for Reconsideration at TSDR 5; Examining Attorney’s Brief, 6 TTABVUE 10.

[marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 115 USPQ2d at 1675 (internal citation quotation marks omitted); *see also Spireon*, 2023 USPQ2d 737, at \*4-5; *Jack Wolfskin*, 116 USPQ2d at 1136. Even if “there is no evidence of actual use” of “third-party registrations,” such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used.” *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976).

We disagree with the Examining Attorney’s finding that the evidence of third-party registrations, albeit limited, is irrelevant because it does not involve retail services in International Class 35. The “controlling inquiry is the extent of third-party marks in use on ‘similar’ goods or services.” *Omaha Steaks*, 128 USPQ2d at 1694 (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)). This means that we are looking for third-party registered marks comprised of the term MULLIGAN in connection with goods or services that are “similar” i.e. “bear [a] relationship” to Registrant’s “Provision of an on-line marketplace for buyers and sellers of golf equipment” and are offered to “the relevant public.” *Omaha Steaks*, 128 USPQ2d at 1694 (products, such as “popcorn,” “wine,” “oriental foods,” and “alcoholic beverages” “bear no relationship to meat or meat-based products” and therefore “are not “similar” to meat products.”). To state the obvious, retail services offering the same products as identified in the third-party registrations are relevant to showing conceptual weakness. *Cf. In re Detroit Athletic*

Co., 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (finding clothing and sports apparel retail services related under the second *DuPont* factor as “confusion is likely where one party engages in retail services that sell goods of the type produced by the other party”).

We further observe that “mulligan” is a term of art in the sport of golf defined as “a free shot sometimes given a golfer in informal play when the previous shot was poorly played.”<sup>12</sup> This, along with the third-party registration evidence discussed above, renders the cited mark MULLIGANS, the plural form of the noun “mulligan,” falling on the weaker end of the conceptual strength spectrum. The sixth *DuPont* factor therefore weighs against a finding of a likelihood of confusion.

## 2. Commercial Strength

As explained above, we have stipulated into the record Applicant’s list of third-party website brand names purporting to establish diminished commercial or marketplace strength of the of Registrant’s mark. *See Palm Bay*, 73 USPQ2d at 1693 (“Evidence of third-party use of similar marks on similar goods [or services] is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”); *see also Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation*, 115 USPQ2d at 1675-76 (internal citations omitted). All we have before us, however, are

---

<sup>12</sup> The Board takes judicial notice of the definition of “mulligan” in THE MERRIAM WEBSTER DICTIONARY <https://www.merriam-webster.com/dictionary/mulligan> accessed on September 26, 2024. *See In re Jimmy Moore LLC*, 119 USPQ2d 1764, 1767-68 (TTAB 2016) (Board may take judicial notice of online dictionary definitions also available in printed form); *In re Cordua Rests. LP*, 110 USPQ2d 122, 1229 n.4 (TTAB 2014) (Board took judicial notice of the definitions of “churrasco” from English language dictionaries), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

the names of eight third-party websites incorporating the term “mulligan,” each purportedly for golf products and services. Without the website screenshots themselves, we cannot establish whether the term MULLIGAN is in current use on the website and, if so, how it is being used. We therefore cannot find on the record before us that the cited mark has been commercially weakened by third-party marketplace evidence.

### 3. Conclusion

Because of the limited probative value of the third-party registration listing, we cannot find on this record that Registrant’s mark has been conceptually weakened by third-party registration evidence. Likewise, because of the incomplete nature of the third-party website evidence of similar marks, we cannot say on this record that the cited mark is commercially weak. However, the cited mark MULLIGANS, the plural of a well-known term in the sport of golf, is conceptually weak. The sixth *DuPont* factor therefore weighs against a likelihood of confusion based on the inherent or conceptual weakness of the cited mark.

#### B. The Marks

The first *DuPont* factor involves an analysis of the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay*, 73 USPQ2d at 1693 (citing *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*,


390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“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) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)). The proper test regarding similarity “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) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks and citation omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Bay State Brewing Co., Inc.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (citing *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)); *see also In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009).

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.”). “No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.” *In re Electrolyte Labs. Inc.*, 913 F.2d 930, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (CCPA 1974)). Nonetheless, 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 Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014).



We now compare Applicant’s composite mark  with the standard mark MULLIGANS. In assessing what constitutes the dominant portion of a composite mark, greater weight is often given to the wording, because it is the wording that purchasers would use to refer to or request the services. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012); *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1247 (TTAB 2010); *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Nonetheless, composite marks, as with any marks, must be considered in their entireties. *See Jack Wolfskin*, 116 USPQ2d at 1134; *Shell Oil*, 26 USPQ2d at 1688; *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974).

The Examining Attorney argues that the dominant feature of Applicant’s composite mark is the word MULLIGAN and that this feature renders the marks



similar in appearance, sound, connotation and commercial impression to the cited mark MULLIGANS because “the registered mark is the plural form of the first word in the applied-for mark.”<sup>13</sup> The Examining Attorney points to the disclaimed wording in Applicant’s mark GOLF GIFT STORE EST. 2021 as subordinate to MULLIGAN because it is merely descriptive or generic of the identified services. He further points to the design elements of Applicant’s mark as less important than the literal elements of Applicant’s mark.

The Examining Attorney improperly dissected Applicant’s composite mark by not considering the effect of the additional wording HOOLIGAN. While Applicant’s and Registrant’s marks do share the term MULLIGAN (or the plural thereof), making them similar to that extent, the distinctions in connotation and commercial impression are significant. Consumers are likely to perceive the dominant feature of Applicant’s mark as the phrase MULLIGAN HOOLIGAN as opposed to MULLIGAN standing alone. We therefore reject the Examining Attorney’s finding that the word MULLIGAN by itself is the dominant element in Applicant’s composite mark, and instead find that the dominant element in Applicant’s mark is the unitary phrase MULLIGAN HOOLIGAN. *Cf. Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (a unitary phrase “elements are inseparable ... [these] observable characteristics [ ] combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements.”); *Ex parte Mooresville Mills, Inc.*, 102 USPQ 440, 441 (Comm’r Pats. 1954) (a unitary

---

<sup>13</sup> Examining Attorney’s Brief, 6 TTABVUE 6.

phrase has “some degree of ingenuity in its phraseology as used in connection with the goods; or [say] something a little different from what might be expected to be said about the product; or [say] an expected thing in an unexpected way.”). Each word has the same number of syllables and ends with the suffix “-ligan” thereby creating the same alliterative cadence and rhythm. *Cf. In re Kraft*, 218 USPQ 571, 573 (TTAB 1983), (Board found LIGHT ‘N LIVELY for reduced calorie mayonnaise unitary based not only on the “alliterative liting cadence” of the wording but also on the fact that the mark as a whole “has a suggestive significance which is distinctly different from the merely descriptive significance of the term ‘LIGHT’ per se” and that “the merely descriptive significance of the term ‘LIGHT’ is lost in the mark as a whole.”).

The additional word HOOLIGAN in Applicant’s mark significantly alters the connotation and commercial impression. This is because the combination of MULLIGAN and HOOLIGAN forming the phrase MULLIGAN HOOLIGAN has a distinct meaning of its own independent of the meaning of its constituent elements. As explained above, a “mulligan” is as a free shot given to a golfer after a poorly played shot. “Hooligan” is defined as “a usually young man who engages in rowdy or violent behavior especially as part of a group or gang.”<sup>14</sup> Based on these definitions, the primary connotation and commercial impression of the phrase MULLIGAN HOOLIGAN in Applicant’s composite mark calls to mind a rowdy and mischievous golfer seeking free shots. By contrast, the cited mark is devoid of any hint or reference

---

<sup>14</sup> The Board takes judicial notice of the definition of “hooligan” in THE MERRIAM WEBSTER DICTIONARY (<https://www.merriam-webster.com/dictionary/hooligan>) accessed on September 26, 2024.

to this playful notion. When confronted with Applicant's and Registrant's marks, prospective consumers will glean different meanings.

We therefore find that the Applicant's and Registrant's marks are different in sound, appearance, connotation and commercial impression when considered in their entireties. *See Jack Wolfskin*, 116 USPQ2d at 1134. The first *DuPont* factor weighs against a finding of likelihood of confusion.

#### B. 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." *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 2024 USPQ2d 293 at \*2 (Fed. Cir. 2024) (citation omitted)). We compare the services as identified in the application and cited registration. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018); *Stone Lion*, 110 USPQ2d at 1161; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also B & B Hardware*, 113 USPQ2d at 2049 (recognizing that an "applicant's right to register must be made on the basis of the goods described in the application").

The identification of goods or services may in itself constitute evidence of the relatedness of the goods or services. *Hewlett-Packard*, 62 USPQ2d at 1004 (finding the Board erred in concluding that there was insufficient evidence of relatedness, because it "did not consider the important evidence already before it, namely the ITU

application and [opposer's] registrations"). The application services are identified as "Retail store services, featuring sporting goods, novelties, souvenirs, office gifts, golf equipment, apparel and accessories, custom logo golf balls, home office decorations, books, games, pranks and novelty gifts" in International Class 35. The cited registration services are "Provision of an on-line marketplace for buyers and sellers of golf equipment" in International Class 35. While Applicant's and Registrant's services differ to the extent one involves retail store services and the other is an on-line marketplace, the services are related given they feature the sale of "golf equipment" and will be encountered by the same classes of consumers, namely, purchasers of golf equipment. The second *DuPont* factor therefore favors a likelihood of confusion.

D. Weighing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument; "explain the results of that weighing;" and "the weight [we] assigned to the relevant factors." *In re Charger Ventures LLC*, 65 F.4th 1375, 2023 USPQ2d 451, at \*7 (Fed. Cir. 2023). "No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark." *Mighty Leaf Tea*, 94 USPQ2d at 1260; *see also Naterra*, 2024 USPQ2d 293, at \*2. We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto.

The services are related, meaning that the second *DuPont* factor favors a likelihood of confusion. The first *DuPont* factor, however, weighs against finding a

likelihood of confusion due to the differences in the marks in sound, appearance, connotation and commercial impression. The sixth *DuPont* factor also weighs against a finding of likelihood of confusion given that the cited mark MULLIGANS is conceptually weak. As a result, the cited mark is entitled to a relatively narrow scope of protection. Keeping this in mind, we find that the dissimilarity of the marks is so great as to outweigh the second *DuPont* factor. We therefore conclude that confusion is unlikely.

**Decision:** The Section 2(d) refusal is reversed.