

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 14, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Brouhaha Tea Company LLC*

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Serial No. 97669586

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A.J. Gokcek, Esq.,  
for Brouhaha Tea Company LLC.

Ashley Albano, Trademark Examining Attorney, Law Office 105,  
Jennifer L. Williston, Managing Attorney.

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Before Goodman, Coggins, and Bradley,  
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Brouhaha Tea Company LLC (“Applicant”) seeks registration on the Principal Register of the standard-character mark **BROUHAHA TEA CO.** (with TEA CO. disclaimed) for the following goods, as amended:

Tea; Tea bags; Tea cakes; Tea extracts; Tea for infusions; Tea of parched powder of barley with husk (mugi-cha); Tea of salty kelp powder (kombu-cha); Tea pods; Tea substitutes; Tea-based beverages; Tea-based beverages containing boba; Tea-based beverages with fruit flavoring; Tea-based beverages with milk; Tea-based iced beverages; Tea-based milk tea; Acanthopanax tea (Ogapicha); Barley tea; Beverages made of tea; Beverages with tea base;

Beverages with a tea base; Black tea; Black tea; Bubble tea; Buckwheat tea; Butterfly pea flower tea; Chai tea; Chamomile tea; Chinese matrimony vine tea (Gugijacha); Citron tea; Cocoa tea; Disposable cups with a tea-filled pouch ultrasonically welded to one side of the bottom of the cup, which allows the natural fiber pouch to float near the bottom; Earl Grey tea; Fermented tea; Flavourings of tea, other than essential oils, for food or beverages; Flowers or leaves for use as tea substitutes; Fruit teas; Ginger tea; Ginseng tea; Green tea; Herb tea; Herb teas; Herbal tea; Herbal tea, other than for medicinal use; Herbal teas; Herbal teas, other than for medicinal use; Iced tea; Instant tea; Instant black tea; Instant green tea; Instant Oolong tea; Instant white tea; Japanese green tea; Jasmine tea; Kelp tea; Kombucha tea; Lime tea; Lime blossom tea; Mixes for making tea; Mixes for making herbal tea; Mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages; Oolong tea; Peppermint tea; Powders for making iced tea; Processed tea leaves; Red ginseng tea; Roasted barley tea; Roasted brown rice tea; Rooibos tea; Rose hip tea; Rosemary tea; Sage tea; Sparkling tea; Syrups for making tea; Theine-free tea; Theine-free tea sweetened with sweeteners; Theine-free tea with added sweeteners; Tieguanyin tea; White tea; White lotus tea (Baengnyeoncha); Yellow tea; Yuja-cha (Korean honey citron tea) in International Class 30.<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the goods identified in the application, so resembles the following two typeset marks,<sup>2</sup> owned by the same registrant and on the Principal Register, as to be likely to cause confusion, to cause mistake, or to deceive:

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<sup>1</sup> Application Serial No. 97669586 was filed on November 9, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere as of February 21, 2021, and first use in commerce at least as early as January 1, 2022.

<sup>2</sup> Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed or typeset mark is the legal equivalent of a standard character mark. *See In re Viterra, Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012).

- **BREW HAHA!**  
for “coffee” in International Class 30;<sup>3</sup> and
- **BREW-HAHA!**  
for “restaurant, cafe, and retail bakery services; retail stores featuring ground and whole bean coffee; cocoa; tea; baked goods; namely, cookies, muffins[;] housewares; namely, coffee cups, mugs” in International Class 42.<sup>4</sup>

When the refusal was made final, Applicant requested reconsideration and amended the identification to delete several goods and all references to “coffee.” After the Examining Attorney denied the request for reconsideration (and accepted the amendment to the goods), Applicant appealed to this Board. We affirm the refusal to register.

#### 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 goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). *See also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023).<sup>5</sup> Our determination under Section 2(d) is based on an analysis of all of the probative

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<sup>3</sup> Registration No. 2020524, issued December 3, 1996; renewed.

<sup>4</sup> Registration No. 1909499, issued August 1, 1995; renewed. While remaining cognizant of the hyphen in one mark and the exclamation point in both, we refer generally to the cited marks as the “BREW HAHA marks” in this decision.

<sup>5</sup> This opinion cites decisions in conjunction with an internal Board pilot program to broaden acceptable forms of legal citation in Board cases. Decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals are cited as they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). Board decisions are cited to the Lexis legal database and are all precedents. Practitioners should adhere to the practice set forth in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 101.03 *et seq.* (2024).

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, 144 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311 (Fed. Cir. 2003).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role and some factors may not be relevant. *Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (quoting *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). In addition, varying weight may be assigned to each factor depending on the evidence presented, and “any one of the factors may control a particular case.” *Id.*; see also *Charger Ventures*, 64 F.4th at 1381. While we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the goods. *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)). These first two factors, along with the third *DuPont* factor, are the focus of Applicant’s appeal and the Examining Attorney’s brief.

When analyzing the factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods and services, 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, 1208 (Fed. Cir. 1993).

A. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s*, 2018 TTAB LEXIS 170, at \*13 (TTAB 2018) (quoting *In re Davia*, 2014 TTAB LEXIS 214, at \*4 (TTAB 2014)).

When comparing Applicant’s standard-character BROUHAHA TEA CO. mark to the cited standard-character BREW HAHA marks, 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, 1373 (Fed. Cir. 2018) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (internal quotation marks and citation omitted)).

The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of trademark marks. *In re St. Julian Wine Co.*, 2020 TTAB LEXIS 196, at \*13 (TTAB 2020). Consumers may not necessarily encounter the marks in close proximity and must rely upon their recollections thereof over time. *In re Mucky Duck Mustard*, 1988 TTAB LEXIS 11, at \*3 (TTAB 1988). Because the goods are coffee and tea, which are relatively inexpensive, comestible

products subject to frequent purchase, consumption, and replacement, the average customer is an ordinary consumer who is not expected to exercise much care. *Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 672 (Fed. Cir. 1984) (finding tea a relatively inexpensive and frequently purchased comestible, and the “[p]urchasers of such products have been held to a lesser standard of care.”).

Applicant argues that the marks differ in appearance due to different wording and punctuation.<sup>6</sup> We acknowledge the differences in wording and punctuation, but also note that each mark contains the element HAHA which is a point of visual similarity. Moreover, because the marks are in standard characters, they can be depicted in any font style, size, or color and could be displayed in the same or similar font styles, further increasing the similarity of their appearances. Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a). *See In re Aquitaine Wine USA, LLC*, 2018 TTAB LEXIS 108, at \*13 (TTAB 2018) (“[T]he rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color.”) (citation omitted).

Applicant argues that the marks differ in sound, as its mark contains three words with five total syllables while the cited marks contain two words with three total syllables.<sup>7</sup> But consumers do not focus on minutia such as the number of syllables or words in each mark; instead, the overall general impression of a mark is more important. *Fuji Jyukogyo K.K. v. Toyota Jidosha K.K.*, 1985 TTAB LEXIS 31, at \*8

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<sup>6</sup> 6 TTABVUE 11. Citations to the briefs in the appeal record refer to the TTABVUE docket system. Citations to the prosecution record refer to the .pdf version of the TSDR system. *See, e.g., In re Seminole Tribe of Fla.*, 2023 TTAB LEXIS 184, at \*1 n.1 (TTAB 2023).

<sup>7</sup> 6 TTABVUE 11.

(TTAB 1985) (“Purchasers do not count letters when reacting to trademarks in the marketplace.”); *In re John Scarne Games, Inc.*, 1959 TTAB LEXIS 31, at \*1 (TTAB 1959) (“Purchasers . . . do not engage in trademark syllable counting -- they are governed by general impressions made by appearance or sound, or both.”).

Applicant also posits that the space or hyphen in the respective BREW HAHA marks will cause consumers to pause slightly between the words BREW and HAHA, and the exclamation point after HAHA will lead to an emphasis when pronouncing the word HAHA.<sup>8</sup> We believe it more likely that consumers will immediately perceive the cited marks to be a playful reference to the common word BROUHAHA and pronounce it as such.<sup>9</sup> As such, the cited BREW HAHA marks are identical in sound to the BROUHAHA portion of Applicant’s mark,<sup>10</sup> which Applicant concedes is the dominant portion of its mark.<sup>11</sup> Even if some consumers were to pronounce the cited marks with Applicant’s slight-pause-and-emphasis cadence, the sound would still be highly similar to the word BROUHAHA.

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<sup>8</sup> 6 TTABVUE 11; 9 TTABVUE 3.

<sup>9</sup> See August 25, 2023 Office Action at 14 (AMERICAN HERITAGE DICTIONARY, definition of “brouhaha”); February 22, 2024 Request for Reconsideration at 64 (WIKTIONARY, definition of “brouhaha”), 68 (COLLINS DICTIONARY, definition of “brouhaha” in American English). This evidence demonstrates that “brouhaha” is an ordinary word used in the English language.

<sup>10</sup> See August 25, 2023 Office Action at 14, 15, and 16 (AMERICAN HERITAGE DICTIONARY, showing pronunciation of the words BROUHAHA, BREW, and HAHA).

<sup>11</sup> 6 TTABVUE 8 (“The dominant word in Applicant’s mark ‘BROUHAHA TEA CO.’ is ‘BROUHAHA’ . . .”), 11 (“Applicant submits that the dominant term ‘Brouhaha’ is arbitrary . . .”), 13 (“Applicant’s dominant term ‘Brouhaha’ is inherently distinctive . . .”). We agree with this concession. See, e.g., *In re Dixie Rests.*, 105 F.3d 1405, 1407 (Fed. Cir. 1997) (DELTA, not the disclaimed generic word CAFE, is the dominant portion of the mark THE DELTA CAFÉ and design).

And while Applicant's mark includes the descriptive (and appropriately disclaimed) trailing words TEA CO., which create a point of departure in the similarity of sound, we must account for the habit of consumers to shorten marks, making it reasonable to assume that at least some consumers will "drop the highly descriptive/generic term [TEA CO.] when calling for Applicant's goods." *In re Bay State Brewing Co.*, 2016 TTAB LEXIS 46, at \*9 (TTAB 2016). *See also In re Abcor Dev. Corp.*, 588 F.2d 811, 815 (CCPA 1978) (Rich, J., concurring: "[T]he users of language have a universal habit of shortening full names from haste or laziness or just economy of words."); *Sabhnani v. Mirage Brands, LLC*, 2021 TTAB LEXIS 464, at \*45 (TTAB 2021) ("The similarity in sound will be greater if consumers engage in 'the penchant of consumers to shorten marks . . . .'" (quoting *In re Bay State Brewing*, 2016 TTAB LEXIS 46, at \*9); *Schieffelin v. Molson*, 1989 TTAB LEXIS 1, at \*11-12 ("We also take into consideration the fact that the products of the parties are of the type ordered verbally in [cafes] and restaurants.").

Precisely because of the identity in sound, or the highly similar sound if considering Applicant's slight-pause-and-emphasis theory of pronunciation, consumers will immediately understand the cited BREW HAHA marks to be clever plays-on-words meaning BROUHAHA. Thus, we find that the cited marks and the dominant BROUHAHA portion of Applicant's mark convey the same connotation and commercial impression (i.e., BROUHAHA). This is especially evident in the context



of Registrant's coffee and coffee-and-tea-related services, and Applicant's tea goods, all of which are brewed and brews.<sup>12</sup>

Applicant argues that because the word BREW is descriptive of, and relatively weak for, Registrant's goods and services,<sup>13</sup> the remaining term HAHA! is the dominant portion of the cited marks.<sup>14</sup> Based on the definition of "brew,"<sup>15</sup> third-party registration evidence,<sup>16</sup> and an article briefly discussing third-party use of coffee shop names,<sup>17</sup> we do not dispute Applicant's assertion that BREW is conceptually weak as a mark for coffee and coffee-related services. But that does not, ipso facto, mean HAHA! becomes the dominant portion of the cited BREW HAHA marks. Such a mechanical approach does not account for the clever play-on-words of the cited marks as a whole which immediately call to mind the word BROUHAHA. The Atlas Obscura article submitted by Applicant reveals that coffee shops frequently use coffee-themed puns and plays-on-words in their names, and this indicates that relevant consumers

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<sup>12</sup> See August 25, 2023 Office Action at 15 (AMERICAN HERITAGE DICTIONARY, definition of "brew": "[t]o make (a beverage) by boiling, steeping, or missing various ingredients: *brew tea*."; "[a] beverage made by brewing."; "[a] serving of such a beverage.").

<sup>13</sup> 6 TTABVUE 9.

<sup>14</sup> See 6 TTABVUE 8 ("[T]he Examining Attorney erred in failing to assign the distinctive word of the mark - "HAHA" - as the dominant portion of the Cited Registrations."); 9 TTABVUE 5 ("[T]he arbitrary term "Haha!" (for coffee products) should be regarded as the dominant word.").

<sup>15</sup> See August 25, 2023 Office Action at 15 (AMERICAN HERITAGE DICTIONARY, definition of "brew").

<sup>16</sup> See February 22, 2024 Request for Reconsideration at 24-54 (Trademark Search results of third-party registrations).

<sup>17</sup> See February 22, 2024 Request for Reconsideration at 55 (Lex Berko, *The Names of America's Coffee Shops Cover All the Grounds*, September 30, 2015, [altasobscura.com](https://altasobscura.com) ("[W]hen it comes to the sheer number of references, 'brew' comes in second place.")).

are conditioned to expect obvious puns.<sup>18</sup> The article supports our view that a coffee drinker would readily perceive the cited BREW HAHA marks to be playful references to the standard word BROUHAHA (and pronounce it as such). Because consumers will immediately perceive the playful nature of the cited marks and conjure the word BROUHAHA, we do not agree with Applicant that HAHA! dominates the cited marks. Instead, there is no dominant portion; the combination of BREW and HAHA! in these marks creates a combination that stands above the constituent parts to conjure the word BROUHAHA.

Of course, Applicant's mark is not just BROUHAHA; it is BROUHAHA TEA CO. And while our overall analysis cannot be predicated on dissecting this mark into its various components, *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985), 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, 1322 (Fed. Cir. 2014). As indicated above, BROUHAHA is the dominant portion of Applicant's mark. We find that TEA CO. lends much less weight, if any, to the connotation and commercial impression of the mark as a whole, and is insufficient to distinguish Applicant's mark from the cited marks. *See e.g., Naterra Int'l*, 92 F.4th at 1119 (because TEA was generic with no source-identifying significance it contributed little or nothing to commercial

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<sup>18</sup> February 22, 2024 Request for Reconsideration at 56 (“Very few of these [coffee shop] names offer the forehead-slapping, spit-out-your-drink sort of puns. They're more obvious than that, readily understood by any passerby without a second look.”).

impression of BABIES' MAGIC TEA); *In re Chatam Int'l, Inc.*, 380 F.3d 1340, 1342-43 (Fed. Cir. 2004); *In re Nat'l Data*, 753 F.2d at 1058 (stating “[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”); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2011) (disclaimed matter is often “less significant in creating the mark’s commercial impression”).

We find that Applicant’s mark BROUHAHA TEA CO. is highly similar in sound, connotation, and commercial impression with the cited BREW HAHA marks. Applicant’s and Registrant’s marks are also visually similar to the extent each contains the element HAHA. In view of the similarities, which outweigh the minor differences, the first *DuPont* factor weighs heavily in favor of a finding of likely confusion.

B. Similarity or Dissimilarity of the Goods and Services, Trade Channels, and Classes of Consumers

The second and third *DuPont* factors respectively consider the similarity and nature of the goods and services as described in the application and cited registrations, and the similarity of established, likely-to-continue trade channels. *DuPont*, 476 F.2d at 1361; *see also B&B Hardware*, 575 U.S. at 143 (recognizing that an “applicant’s right to register must be made on the basis of the goods described in the application”); *Naterra Int'l*, 92 F.4th at 1117-18; *In re Detroit Athletic Co.*, 903 F.3d 1297, 1300 (Fed. Cir. 2018).

Applicant asserts that because it amended its identification of goods to delete all references to “coffee,” there is “no tea product in Applicant’s long listing of goods [that]

is identical to any of Registrant's goods or services,"<sup>19</sup> and there "is no overlap between Applicants' tea-based goods and Registrant's" coffee.<sup>20</sup> But the goods and services 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.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, 2007 TTAB LEXIS 58, at \*28-29 (TTAB 2007)).

Likelihood of confusion must be found if there is likely to be confusion with respect to any item in a class that comes within the identification of goods or services in the application and cited registration. *In re i.am.symbolic, llc*, 2015 TTAB LEXIS 369, at \*8 (TTAB 2015), *aff'd*, 866 F.3d 1315 (Fed. Cir. 2017) (citing, inter alia, *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981)). In view thereof, while Applicant's identification of goods contains, as Applicant calls it, "a long listing of goods,"<sup>21</sup> we need only focus our analysis on the broadly worded "tea."

We start our comparison of Applicant's "tea" to the similarly broad "coffee" identified in Registration No. 2020524. The fact that Applicant initially sought registration of its mark for coffee and tea is probative evidence that these goods are

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<sup>19</sup> 9 TTABVUE 5.

<sup>20</sup> 6 TTABVUE 14.

<sup>21</sup> 9 TTABVUE 5.

intrinsically related and may come from the same source under the same mark. *See Octocom Sys. Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, at 941 (Fed. Cir. 1990) (“Indeed, that such goods might come from a single source is shown by [Appellant’s] original application, which indicates [Appellant] itself used the mark . . . for both modems and computer programs.”); *In re HerbalScience Grp., LLC*, 2010 TTAB LEXIS 382, at \*9-10 (TTAB 2010) (the applicant was found to have acknowledged the relatedness of nutritional supplements and dietary supplement drinks because the applicant originally included both sets of goods in its identification of goods); *cf. Nike Inc. v. WNBA Enters. LLC*, 2007 TTAB LEXIS 39, at \*19 (2007 TTAB) (“Applicant itself offers or intends to offer both types of products” under the mark).

In addition, the Examining Attorney demonstrated with ample third-party Internet screenshots and third-party registrations, that tea is commercially related to coffee.<sup>22</sup> *See, e.g., In re Ox Paperboard, LLC*, 2020 TTAB LEXIS 266, at \*15 (TTAB 2020) (evidence of relatedness may include Internet excerpts showing the goods advertised and sold by the same manufacturer or dealer, and prior use-based registrations covering both parties’ goods). Applicant does not appear to seriously

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<sup>22</sup> *See* 8 TTABVUE 9-10 (listing multiple websites including The Coffee Bean & Tea Leaf, Orinoco Coffee & Tea Ltd., Joffrey’s Coffee & Tea Company, and Tynan Coffee & Tea) and 10-13 (listing third-party registrations including Registration Nos. 4690045, 5325527, 5539329, 6698656, 6770562, 6883187, 68949578, 7034643, 7103353, 7104528, 7110657, 7139226, and 7146932). These pages cite specific examples, list the goods, and provide citation to the record.

contest that the goods at issue (i.e., tea and coffee) are related.<sup>23</sup> Instead, the focus of Applicant's arguments appears to be that "there is insufficient evidence to establish that the respective goods and services are closely related."<sup>24</sup>

Turning our comparison to Applicant's "tea" and the services identified in Registration No. 1909499, this cited registration includes "retail stores featuring . . . tea." As a practical matter, consumers would expect to find tea in retail stores featuring tea. It is well recognized that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for retail services involving those goods, on the other. *See, e.g., In re Detroit Athletic*, 903 F.3d at 1307 (affirming Board's finding that clothing and sports apparel retail services are related, noting that "confusion is likely where one party engages in retail services that sell goods of the type produced by the other party"); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464 (Fed. Cir. 1988) (finding that the difference between goods and retail store services featuring those and other goods "to be of little or no legal significance. The respective marks will have their only impact on the purchasing public in the same marketplace."); *In re Country Oven*, 2019 TTAB LEXIS 381, at \*5-7 (finding bread buns and retail bakery shops related). Accordingly, Applicant's tea is inherently related to Registrant's retail services featuring tea.

Because we find tea related to retail stores featuring tea, we need not address the other services in cited Registration No. 1909499. *See SquirtCo v. Tomy Corp.*, 697

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<sup>23</sup> To be clear, "Applicant did not concede overlap between the goods in its Appeal Brief." 9 TTABVUE 5.

<sup>24</sup> 6 TTABVUE 14.

F.2d 1038, 1041 (Fed. Cir. 1983) (a single good or service from among several may sustain a finding of likelihood of confusion); *In re i.am.symbolic, llc*, 2015 TTAB LEXIS 369, at \*8 (any one item in a class may sustain a finding of likely confusion).<sup>25</sup>

Turning to the trade channels of the relevant tea and coffee goods, the same third-party website evidence showing that Applicant's and Registrant's goods are related demonstrates both Applicant's and Registrant's goods may be encountered by the same classes of consumers under the same marks in common trade channels, namely, retail stores and websites providing Registrant's coffee on the one hand, and Applicant's tea on the other hand.<sup>26</sup> *See, e.g., Charger Ventures*, 64 F.4th at 1382 (evidence of third parties offering both relevant services at issue under the same mark and, often, on the same website supported Board's finding of relatedness under the second *DuPont* factor and "some overlap" under the third *DuPont* factor).

As for the trade channels for tea and retail services featuring tea, because the application does not contain any restriction on the channels of trade or classes of purchasers, Applicant's goods presumptively move in all relevant trade channels, including retail stores like Registrant's, to the same consumers that purchase goods through Registrant's channels of trade. *In re Country Oven*, 2019 TTAB LEXIS 381, at \*18. "Indeed, where one party uses its mark on goods that are sold in retail stores

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<sup>25</sup> Nor need we address the Examining Attorney's Internet screenshots and third-party registrations which amply demonstrate the relationship between tea and the other services in the registration.

<sup>26</sup> Indeed, Applicant "concedes some overlap [in the channels of trade] between its tea-based products and Registrant's coffee . . . ." 6 TTABVUE 16. *See also* 90 TTABVUE 5 ("What Applicant conceded was some overlap in the channels of trade between the tea and coffee products in Class 30.").

that customarily vend those goods, it is clear that the trade channels and customers overlap.” *Id.* at \*19

We find that the *DuPont* factors of the relatedness of the goods, channels of trade, and target consumers weigh in favor of a finding of likelihood of confusion.

### C. Summary; Weighing the Factors

The first *DuPont* factor weighs heavily in favor of a likelihood of confusion, and the second and third *DuPont* factors also weigh in favor of a likelihood of confusion. The marks are more similar than dissimilar, conveying the same overall connotation and commercial impression. The goods and services are related and sold through at least overlapping channels of trade to overlapping consumers. When we consider and weigh the evidence of record and the relevant likelihood of confusion factors, *Charger Ventures*, 65 F.4th at 1384, we find confusion is likely between Applicant’s mark BROUHAHA TEA CO. and the cited BREW HAHA marks.

## II. Decision

The Section 2(d) refusal to register Applicant’s mark is affirmed.