

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

Mailed: February 11, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Rich Trappers Club LLC

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Serial No. 97774077
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Adriano Pacifici of Intellectual Property Consulting, LLC,
for Rich Trappers Club LLC.

Brendan McCauley, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

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Before Heasley, English, and Brock,
Administrative Trademark Judges.

Opinion by Brock, Administrative Trademark Judge:

Rich Trappers Club LLC (“Applicant”) seeks registration on the Principal Register of the composite mark shown below (“CLUB” disclaimed) for “Clothing, namely, pants, shirts; footwear; headwear; all of the foregoing excluding apparel for collegiate institutes and not related to educational services and the promotion thereof” in International Class 25 and “On-line wholesale and retail store services featuring

clothing; all of the foregoing excluding apparel for collegiate institutes and not related to educational services and the promotion thereof” in Class 35:¹



The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard-character mark RTC registered on the Principal Register for goods and services including “Hats; Hooded sweat shirts; Scarves; Scrubs not for medical purposes; Shirts; Sweat pants; T-shirts” in International Class 25 (“Registrant’s Mark” or “Cited Registration”).²

¹ Application Serial No. 97774077 was filed on January 31, 2023 based upon Applicant’s allegation 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 application includes the following description of the mark: “The mark consists of a stylized image of a bundle of money with a face, hands, and feet wearing sneakers. The bundle of money is also wearing a hat and holding a bear trap attached to a chain. Below the image is the stylized large letters ‘RTC’ and below ‘RTC’ is ‘RICH TRAPPER\$ CLUB’ stylized.” Color is not claimed as a feature of the mark.

² Citations are to the downloadable .pdf versions of documents in the Trademark Status & Document Retrieval (TSDR) database.

Registration No. 5076451 was issued on November 8, 2016. Registrant’s declarations of use and of incontestability under Sections 8 and 15 have been accepted and acknowledged. The registration covers additional goods in International Class 21 and services in International

Applicant appealed the final refusal to register and requested reconsideration, which was denied. The appeal was resumed and both Applicant and the Examining Attorney filed briefs.³ For the reasons explained, we reverse the refusal to register.

I. Analysis

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on 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 Ind., Inc.*, 575 U.S. 138, 144 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of

Class 41, but the Section 2(d) refusal is based solely on the goods in International Class 25 listed above. See February 19, 2024 Final Office Action, TSDR 3.

³ Appeal Brief, 6 TTABVUE; Examiner’s Brief, 8 TTABVUE. Citations to the briefs refer to TTABVUE, the Board’s online docket system.

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, this opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the Lexis legal database. Until further notice, practitioners should continue to adhere to the practice set forth in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03.

the goods [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976).

We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 1381 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, Opp. No. 91194974, 2015 TTAB LEXIS 67, at *26 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). Varying weight, however, 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, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”). One factor may be dispositive. *Kellogg Co. v. Pack’em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single [D]uPont factor may not be dispositive.”).

A. Similarity of Goods and Services, Trade Channels, and Consumers

Under the second *DuPont* factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration” and under the third and fourth *DuPont* factors we consider “the similarity or dissimilarity of established, likely-to-continue trade channels” and that portion of the fourth *DuPont* factor that addresses “the conditions under which and buyers to whom sales are made.” *DuPont*, 476 F.2d at 1361; *In re Detroit Ath. Co.*, 903 F.3d 1297, 1306,

1308 (Fed. Cir. 2018); *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 TTAB LEXIS 464, at *20 (TTAB 2021).

We consider Applicant's Class 25 clothing items and Class 35 retail services in turn, beginning with Applicant's restriction to its identifications in both classes: "all of the foregoing excluding apparel for collegiate institutes and not related to educational services and the promotion thereof" and Applicant's argument that Registrant, Renton Technical College, is "a technical college that sells simple clothing bearing the name of its institution for students and faculty."⁴

The Cited Registration contains no restrictions. We are required to give "full sweep" to an identification of goods regardless of a registrant's actual business. *Paula Payne Prods. Co. v. Johnson Publ'g Co., Inc.*, 473 F.2d 901, 902 (CCPA 1973). As we have explained in innumerable decisions, the Board may not consider arguments "about how the parties' actual goods, services, customers, trade channels, and conditions of sale are narrower or different from the goods and services identified in the applications and registrations." *In re FCA US LLC*, Serial No. 85650654, 2018 TTAB LEXIS 116, at *12 n.18 (TTAB 2018); *see also, e.g., In re i.am.symbolic, llc*, 866 F.3d 1315, 1327 (Fed. Cir. 2017) ("[T]he Board properly declined to import restrictions into the identification of goods based on alleged real world conditions."); *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1373 (Fed. Cir. 2013) ("The PTO proceedings are 'based on the content of the registration application' and not upon any specific use of the challenged mark in commerce."); *In re Thor Tech, Inc.*,

⁴ Appeal Brief, 6 TTABVUE 20.

Ser. No. 78634024, 2009 TTAB LEXIS 253, at *15 (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”). Absent a restriction to Registrant’s goods, Applicant’s restriction of its own identification of goods does not impose a meaningful limitation. *In re i.am.symbolic*, 866 F.3d at 1326-1327 (“Here, substantial evidence supports the Board’s findings that [Applicant’s] restriction does not impose a meaningful limitation and the registrations at issue do not contain any express limitations. Thus, unlike in *M2 Software*, the application and registrations here do not contain meaningful limitations in the identification of goods.”); *cf. M2 Software, Inc. v. M2 Commc’ns.*, 450 F.3d 1378, 1382 (Fed. Cir. 2006) (affirming Board’s determination that goods were not related and channels of trade and purchasers were different where identification of goods for both registrant’s and applicant’s marks were limited to ‘CD-ROMs produced for a particular field[,] ‘music or entertainment’ and ‘pharmacy and medicine,’ respectively).

Accordingly, the limitation in Applicant’s identifications of goods and services does not meaningfully distinguish Applicant’s goods and services from those of Registrant. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1308 (Fed. Cir. 2018) (“Even if true [that Registrant athletic club sells clothing only to members and in one store], this assertion is, once again, irrelevant.”).

1. Class 25

Applicant’s “shirts,” excluding shirts “for collegiate institutes and not related to educational services and the promotion thereof,” are encompassed within Registrant’s broadly-identified “shirts.” *See, e.g., In re Hughes Furniture Indus., Inc.*,

Ser. No. 85627379, 2015 TTAB LEXIS 65, at *10 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of goods in a particular class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *Double Coin Holdings Ltd. v. Tru Dev.*, Can. No. 92063808, 2019 TTAB LEXIS 347, at *18 (TTAB 2019); *In re i.am.symbolic, LLC*, Ser. No. 85044494, 2015 TTAB LEXIS 369, at *8 (TTAB 2015), *aff’d*, 866 F.3d 1315 (Fed. Cir. 2017).

Because there are no restrictions in the Cited Registration (we have already discussed the ineffectiveness of the restriction in the Application), we must presume that the identical goods travel through the same channels of trade to the same purchasers. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018) (“With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and ‘presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods....’”); *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (identical goods are presumed to travel in same channels of trade to same class of purchasers).

As to Class 25, the second, third, and part of the fourth *DuPont* factors support a finding of a likelihood of confusion.

2. Class 35

Applicant's Class 35 services are not identical to Registrant's Class 25 goods, but the respective goods and services need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [they] emanate from the same source." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 TTAB LEXIS 58, at *28-29 (TTAB 2007)). There is an inherent relationship between the various clothing items in the Cited Registration and Applicant's "wholesale and retail services **featuring clothing**, excluding apparel for collegiate institutes and not related to educational services and the promotion thereof." (emphasis added). It is well recognized that use of the same or similar marks for goods by one party, and for services involving those goods by another, may lead to a likelihood of confusion. *See Detroit Ath. Co.*, 903 F.3d at 1307 (finding clothing and sports apparel retail services related as "confusion is likely where one party engages in retail services that sell goods of the type produced by the other party"). We find that the identifications in the application and Cited Registration themselves support finding the goods and services closely related.

This determination is further supported by the evidence showing it is common for third parties to use a single mark for both clothing and retail store services featuring

clothing, namely, Adidas,⁵ L.L.Bean,⁶ Kenneth Cole,⁷ Talbots,⁸ and Banana Republic.⁹ *See Detroit Ath. Co.*, 903 F.3d at 1306 (record evidence “show[ing] that several third-party apparel retailers—i.e., Adidas, Hanes, Nike, and Puma—sell clothing bearing their own marks in addition to clothing bearing sports team names and logos” suggested “that consumers are accustomed to seeing a single mark associated with a source that sells both its own branded clothing ... as well as sports-teams-branded clothing[.]”); *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 TTAB LEXIS 381, at *13 (TTAB 2019) (evidence showing bakeries “use the same mark in connection with retail bakery shops and bakery products that they custom bake or sell in their retail bakery shops” demonstrated relatedness of the goods and services).

With respect to trade channels and consumers, our analysis is similar to our consideration of Applicant’s Class 25 goods. That is, we begin again by noting that because the Cited Registration does not “contain[] any restriction on the channels of trade or classes of purchasers, ... [t]he registered goods presumptively move in all relevant trade channels, including [Applicant’s], to the same consumers that purchase goods through [Applicant’s channels of trade].” *In re Country Oven*, 2019 TTAB LEXIS 381, at *13. “Indeed, where one party uses its mark on goods that are sold in retail stores that customarily vend those goods, it is clear that the trade

⁵ October 31, 2023 Nonfinal Office Action, TSDR 22-27, 31, 41-43, 46, 49-50, 58-59.

⁶ *Id.* at TSDR 77-79, 82, 84-87, 91-92, 94, 102, 106-107, 112.

⁷ February 19, 2024 Final Office Action, TSDR 32-35, 38-39, 44, 49, 52-53.

⁸ *Id.* at 77-79, 81.

⁹ *Id.* at 179.

channels and customers overlap. This presumption is consistent with the evidence discussed in the preceding section, which shows that [Registrant's goods] are sold through [stores like Applicant's]. These [*DuPont*] factors also favor a finding of likelihood of confusion." *Id.* (internal citation omitted).

In Class 35, the second, third, and part of the fourth *DuPont* factors also support a finding of a likelihood of confusion.

B. 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." *DuPont*, 476 F.2d at 1361; *see also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1319 (Fed. Cir. 2014). "Similarity is not a binary factor but is a matter of degree." *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 TTAB LEXIS 14, at *44 (TTAB 2023) (quoting *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (internal quotation omitted)). The focus is on the recollection of an ordinary consumer, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007 (CCPA 1971); *L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 TTAB LEXIS 77, at *16 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, Opp. No. 91055167, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). The ordinary consumer for Applicant's goods and services and Registrant's goods is the general public that purchases clothing.

Again, Applicant's mark is:



The RTC component in Applicant’s mark is an initialism for the other wording in the mark, RICH TRAPPER\$ CLUB. The Cited Mark is RTC in standard characters.

The Examining Attorney argues that RTC is the dominant portion of both marks and that this is controlling: (1) “both marks are identical in part as to the rare combination of the identical three letters”;¹⁰ (2) “given there is no indication on registrant’s drawing for the meaning of ‘RTC’, a meaning for ‘RTC’ in registrant’s mark as ‘RICH TRAPPER\$ CLUB’ is plausible”;¹¹ (3) RTC is the first and largest word element in Applicant’s mark, and in a composite mark, the wording is generally given greater weight than a design element;¹² (4) as a registration with a standard character claim, Registrant’s Mark may be presented in any stylization including that

¹⁰ Examiner’s Brief, 8 TTABVUE 5. The Examining Attorney’s contention that the combination of letters in RTC is rare appears unfounded in the record. To the extent that this may be intended as argument under the sixth *DuPont* factor— a suggestion that there are few third party uses of RTC as a trademark—we do not have evidence before us on this point to consider. *In re Guild Mortg. Co.*, 912 F.3d at 1379.

¹¹ Examiner’s Brief, 8 TTABVUE 5.

¹² *Id.* at 6-7.

of Applicant's mark;¹³ and (5) Applicant's mark incorporates the entirety of Registrant's Mark.¹⁴

For its part, Applicant argues: (1) the significant design element of Applicant's mark outweighs any potential similarity between the marks,¹⁵ (2) the Examining Attorney gave undue weight to the RTC component of Applicant's mark,¹⁶ and (3) the literal elements of the two marks are sufficiently different such that confusion is unlikely.¹⁷

The marks must be considered in their entireties, but "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 Detroit Ath. Co.*, 903 F.3d at 1305 (quoting *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)). We disagree with the Examining Attorney that RTC is the dominant portion of Applicant's mark and that Applicant's mark is confusingly similar to the Cited Mark in appearance, sound, meaning, and commercial impression.

¹³ *Id.* at 6.

¹⁴ *Id.* at 8.

¹⁵ Appeal Brief, 6 TTABVUE 8-16.

¹⁶ *Id.* at 16-17.

¹⁷ *Id.* at 17-19.

1. Appearance

As described in the Application: “The mark consists of a stylized image of a bundle of money with a face, hands, and feet wearing sneakers. The bundle of money is also wearing a hat and holding a bear trap attached to a chain. Below the image is the stylized large letters ‘RTC’ and below ‘RTC’ is ‘RICH TRAPPER\$ CLUB’ stylized.”

The image of the anthropomorphic bundle of money in Applicant’s mark—a character—appears first, or above, the wording beneath it. Spatially, the character design is twice as tall as the combined wording RTC RICH TRAPPER\$ CLUB and three times as tall as the term RTC alone. The character element looms large—literally and figuratively—over the wording below it and reflects the wording and stylization elements in RICH TRAPPER\$ CLUB. The bundle of money character itself emphasizes the word RICH as well as the dollar sign in the word TRAPPER\$. The character holds a chain attached to a bear trap—another visual link to the wording TRAPPER\$.

The next element, in terms of both size and position, is the RTC wording. Much as the bundle of money character and the RICH TRAPPER\$ CLUB wording work together, each to emphasize the other, this relationship also exists between the acronym RTC and its explanatory RICH TRAPPER\$ CLUB wording. There is no immediate relationship between the RTC wording and the bundle of money character above it; the link between the two is the remaining element, RICH TRAPPER\$ CLUB.

The smallest element visually, the RICH TRAPPER\$ CLUB wording at the bottom of the mark, is reflected in the other two elements: as an illustration (in the bundle of money character) and in its acronym (the RTC wording). In this manner, the three components—the bundle of money character, RTC, and RICH TRAPPER\$ CLUB—work in concert to create the overall visual impression.

While the Examining Attorney correctly states that, in general, in a likelihood of confusion analysis, wording is given greater weight than a design element in a composite mark,¹⁸ in this case, for the reasons explained, we find that the bundle of money character is entitled to at least as much weight as the RTC wording, which in turn reflects the meaning RICH TRAPPER\$ CLUB. We do not find that the RTC element is dominant, as it merely reinforces the phrase RICH TRAPPER\$ CLUB and the character depiction of that phrase. The Examining Attorney also contends that the marks are similar because Registrant may display its RTC mark in the same lettering style as the literal portion of Applicant's mark. Yet, given the size and prominence of the design component of Applicant's mark, the way it reflects the RICH TRAPPER\$ CLUB wording, and the design within the wording itself—namely, the choice to use a dollar sign as a visual callback to the both the wording and character design—the marks would still be visually distinct, even given the vagaries of memory.

¹⁸ 8 TTABVUE 6-7. Citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, Opposition No. 91223352, 2022 TTAB LEXIS 228, at * 49-50 (TTAB 2022) (quoting *Sabhnani*, 2021 TTAB LEXIS 464, at *40); TMEP §1207.01(c)(ii).

For these reasons, we find that a purchaser with a general rather than specific impression of Applicant's mark is more likely to remember the words RICH TRAPPER\$ CLUB and the character design than just the letters RTC alone. Accordingly, comparing the appearance of the marks in their entireties, we give more weight to the words RICH TRAPPER\$ CLUB and the design element of the bundle of money character, which reinforce each other, than to the abbreviation RTC.

2. Sound

As to sound, we find that the marks sound more dissimilar than similar. The Board has recognized “the penchant of consumers to shorten marks,” *Iron Balls Int'l. Ltd. v. Bull Creek Brewing, LLC*, Can. No. 92079099, 2024 TTAB LEXIS 205, at * 65 (TTAB 2024) (quoting *In re Bay State Brewing Co.*, Ser. No. 85826258, 2016 TTAB LEXIS 46, at *3 (TTAB 2016)). While it is possible that Applicant's mark will be verbalized by using RTC alone, this could occur only after the relevant purchaser has been exposed to both the significant design component and the wording RICH TRAPPER\$ CLUB in Applicant's mark and made aware of the marks' differences. On balance, it is likely that consumers would refer to the mark as RICH TRAPPER\$ CLUB because it is so tied to the prominent design element, explains the RTC acronym, and captures the overall meaning of the mark; this is not true of the RTC acronym alone.

3. Meaning and Commercial Impression

Perhaps conceding that the marks are dissimilar in sight and sound, the Examining Attorney states, “[a]s in the present case, consumer confusion has been

held likely for marks that do not physically sound or look alike but that convey the same idea, stimulate the same mental reaction, or may have the same overall meaning.”¹⁹ As to the meaning of the marks, the Examining Attorney does not argue that the marks are similar in meaning, but rather its converse: that nothing in the Cited Registration “would contradict the [mistaken] conclusion that the letters stand for ‘RICH TRAPPER\$ CLUB’. Therefore, when the drawings are compared, the marks are similar in meaning or connotation related to the common use of the identical ‘RTC’ term.”²⁰ We disagree with the Examining Attorney’s assertion that it is “plausible”²¹ that purchasers will believe that RTC in the Cited Registration means RICH TRAPPER\$ CLUB. Although Registrant’s name is Renton Technical College, it is true that there is nothing in Registrant’s Mark to indicate whether RTC is intended to be a word, a set of random letters, an acronym or initialism—and if so, what the letters RTC represent.²² Given the myriad possibilities—and that RICH TRAPPER\$ CLUB is but one rather incongruous option—it seems unlikely that purchasers will assign this meaning to Registrant’s Mark; we find this possibility too attenuated. That is, our determination rests on “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression,” *DuPont*, 476 F.2d at 1361, not the absence of a contradictory meaning.

¹⁹ 8 TTABVUE 7.

²⁰ *Id.* at 5.

²¹ *Id.*

²² The Cited Registration is owned by Renton Technical College, as stated above, so with this information, one can surmise that RTC in the Cited Mark refers to Registrant’s name. Purchasers will not necessarily have this information, however.

In considering overall commercial impression, as described above, the three components of Applicant's mark—the bundle of money character, RTC, and RICH TRAPPER\$ CLUB—work in concert to create the overall commercial impression. We thus find that Applicant's RTC RICH TRAPPER\$ CLUB mark creates a commercial impression distinct from Registrant's RTC mark.

4. Summary

Because of the many points of distinction—individually and cumulatively—between the marks in appearance, sound, meaning, and commercial impression, we find that the marks in their entireties are substantially different. The first *DuPont* factor weighs strongly against a finding of likely confusion.

II. Conclusion: Balancing of the *DuPont* Factors

Registrant's and Applicant's goods are in part identical and Registrant's goods and Applicant's services are closely related. The purchasers and trade channels for Applicant's goods and services and Registrant's goods also overlap. *DuPont* factors two, three, and a portion of four weigh in favor of a finding of likely confusion. We weigh this against our findings under the first *DuPont* factor as to the similarities or dissimilarities in the marks, which “is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d at 752 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (Fed. Cir. 2003)). We find that the substantial differences in appearance, sound, meaning, and commercial impression of the marks outweighs the second, third and fourth *DuPont* factors. *See Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 1381-1382 (Fed. Cir. 2016) (holding that although Applicant's

MAYARI mark incorporated the entirety of Opposer's MAYA mark for identical goods, "the Board did not err in balancing all relevant *DuPont* factors and in determining that the dissimilarity of the marks was sufficient to preclude a likelihood of confusion" (citing *Odom's Tenn. Pride Sausage, Inc. v. FF Acquisition, L.L.C.*, 600 F.3d 1343, 1346-47 (Fed. Cir. 2010) ("a single *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks.") (internal quotation omitted)). Applicant's mark is unlikely to cause confusion with the Cited Mark.

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