

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Juiceland IP Holdings, LLC

Serial No. 97830521

Joshua G. Jones of Dickinson Wright PLLC
for Juiceland IP Holdings, LLC.

Sarah Peritz, Trademark Examining Attorney, Law Office 129,
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Before Kuhlke, Cohen and O'Connor,
Administrative Trademark Judges.

Opinion by Cohen, Administrative Trademark Judge:

Applicant, Juiceland IP Holdings, seeks registration on the Principal Register of the mark DR. DOCTOR in standard characters for “fruit juice; fruit juice beverages; vegetable-fruit juices; vegetable juice; non-alcoholic drinks, namely, energy shots” in International Class 32.¹

¹ Application Serial No. 97830521 was filed on March 9, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a) and claiming a date of first use anywhere and in commerce of November 1, 2018.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system and identify the documents by title, date, and page in the downloadable .pdf version. Citations to the briefs and other materials in the appeal record

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as used in connection with its identified goods, so resembles the typed drawing mark DR DR on the Principal Register for "beverages, namely, carbonated and noncarbonated flavored sodas and drinking water" in International Class 32,² as to be likely to cause confusion, to cause mistake, or to deceive.

When the refusal was made final, Applicant filed a Request for Reconsideration and an Appeal. The Request for Reconsideration was denied and the Appeal resumed. Applicant and the Examining Attorney have submitted their respective Appeal briefs. For the reasons explained below, we affirm the refusal to register.

I. Evidentiary Issue

Applicant attaches previously submitted evidence to its Appeal brief.³ Because this evidence was previously made of record, it was unnecessary for Applicant to attach it to its brief. *In re Information Builders Inc.*, Ser. No. 87753964, 2020 WL 2094122, at *2 n.4 (TTAB 2020) (attaching previously submitted evidence to an

refer to the Board's TTABVUE online docket system.

As part of an internal Board pilot citation program on possibly broadening acceptable forms of legal citation in Board cases, this decision varies from the citation form recommended in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). This decision cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals 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 and the Director, this decision includes the proceeding numbers, when available, and employs citations to the WESTLAW (WL) database.

² Registration No. 2867402 issued July 27, 2004.

³ 6 TTABVUE 7-13; *see* March 7, 2024 Response to Office Action at TSDR 5-11.

appeal brief is unnecessary and impedes efficient disposition of the appeal by the Board).

II. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1319 (Fed. Cir. 2018) (citing *DuPont*, 476 F.2d at 1361).

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). “Not all of the *DuPont* factors are necessarily relevant or of equal weight in a given case, and any one of the factors may control a particular case. ... Only the *DuPont* factors of significance to the particular mark need be considered in the likelihood of confusion analysis.” *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022) (internal citation and punctuation omitted).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *In re Charger Ventures LLC*, 64 F.4th 1375, 1381 (Fed. Cir. 2023) (“The Board is required to consider each factor for which it has evidence, but it can focus its analysis on dispositive factors.”); *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)

(“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 1322 (Fed. Cir. 2017); *Ricardo Media Inc. v. Inventive Software, LLC*, Opp. No. 91235063, 2019 WL 3956987, at *9 (TTAB 2019).

A. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018) (quoting *In re Davia*, Ser. No. 85497617, 2014 WL 2531200, at *2 (TTAB 2014)).

“The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *i.am.symbolic*, 866 F.3d at 1323 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (internal quotation marks omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, Ser. No. 78814088, 2016 WL 3915987, at *5

(TTAB 2016); *In re Mr. Recipe, LLC*, Ser. No. 86040643, 2016 WL 1380730, at *6 (TTAB 2016).

Applicant contends that while its mark DR. DOCTOR may be interpreted as DOCTOR DOCTOR, the evidence of record is insufficient to show “that an ordinary consumer would assume that the [cited] mark DR DR would be interpreted as DOCTOR DOCTOR as the examiner argues”;⁴ and that there is evidence that DR can mean drive, door and drop.⁵ Applicant also attempts to distinguish its use of DR arguing that it uses a period and the cited mark does not.⁶ These arguments are unavailing.

The wording in Applicant’s and Registrant’s marks is almost identical. “DR” is an identically-pronounced abbreviation for “doctor,” a title used before a person’s name.⁷ The marks differ somewhat in that the second term in Applicant’s marks is DOCTOR and Registrant’s is the abbreviation for doctor, “DR”. We find the marks are phonetic equivalents and are capable of being pronounced similarly, if not identically.

Further, the marks are similar in appearance as they both are two words with each mark beginning with an identically pronounced abbreviation for doctor, “DR”.⁸

⁴ 6 TTABVUE 4.

⁵ *Id.* (Applicant includes a printout from ACRONYMFINDER.COM which reads “What does DR stand for?” and then lists doctor, down (stage) right, drive, door, drop and other terms). March 7, 2024 Response to Office Action at TSDR 5-10.

⁶ 6 TTABVUE 4 (“with an abbreviation following “Dr.” ... may support a finding of a consumer interpreting Applicant’s mark as DOCTOR DOCTOR.”).

⁷ March 29, 2024 Final Office Action at TSDR 23-34 (the Examining Attorney includes printouts from AHDICIONARY.COM which indicates that “Dr.” means “doctor” and ACRONYMFINDER.COM which reads “What does DR stand for?” and lists “Doctor” first).

⁸ 8 TTABVUE 4.

The marks' "lead words are their dominant portion and are likely to make the greatest impression on consumers." *In re Detroit Athl. Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018); *see also In re Dare Foods Inc.*, Ser. No. 88758625, 2022 WL 970319, at *6 (TTAB 2022).

Additionally, both marks have a similar if not identical connotation and commercial impression. The use of DR/DR. followed by DR/DOCTOR create the impression of a person with certain expertise or that a doctor is associated with the company selling the goods or otherwise involved with the creation, sale or manufacture of the relevant goods. The addition of punctuation in Applicant's mark does not detract from the nearly identical similarity in connotation and commercial impression of the marks. *See Peterson v. Awshucks SC, LLC*, Can. No. 92066957, 2020 WL 7888976, at *18 (TTAB 2020) ("Punctuation, such as quotation marks, hyphens, periods, commas, and exclamation marks, generally does not significantly alter the commercial impression of the mark."). Consumers will understand DR as an abbreviation of "doctor" with or without a period. Although there are some differences in spelling, the near identity of the marks in connotation and commercial impression is "sufficient to find the marks confusingly similar." *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 WL 6072822, at * 13 (TTAB 2021) (quotation omitted).

We are not persuaded on this record that consumers would attribute one definition of DR to Registrant's goods and another to Applicant's goods. While the evidence shows there are other definitions of DR, Applicant did not submit any evidence to support a finding on the likely meaning of DR to consumers. On the other hand, the Examining Attorney submitted several third-party registrations displaying use of DR

(with and without a period) in support of the argument that consumers are familiar with the use of DR in relation to the relevant beverages and would likely interpret DR as “doctor,”⁹ including DR PEPPER DARK BERRY, DR. INKERS’ CHOICE, DR. BROWN’S, DR. BETTER, DR ORGANIC, and DR. GOOD GUY.¹⁰

Given the nearly identical sound, connotation, commercial impression and similar appearance, and taking into account that consumers retain “a general rather than a specific impression of marks,” we find the marks very similar. *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at *4 (TTAB 2021).

The first *DuPont* factor strongly supports a finding of a likelihood of confusion.

B. Relatedness of the Goods, Channels of Trade, and Classes of Customers

We consider the “similarity or dissimilarity and nature of the goods or services as described in an application or registration”; “[t]he similarity or dissimilarity of established, likely-to-continue trade channels”; and the classes of consumers to which the goods are marketed. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1320 (Fed. Cir. 2014) (quoting *DuPont*, 476 F.2d at 1361).

The goods need not be identical or even competitive in order to find a likelihood of confusion. Rather, the question is whether the goods are marketed in a manner that “could give rise to the mistaken belief that they emanate from the same source” or are sponsored or endorsed by the same entity. *Coach Servs.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 WL 1431084, at *6

⁹ 8 TTABVUE 5.

¹⁰ March 29, 2024 Final Office Action at TSDR 7-22.

(TTAB 2007)); *Majestic Distilling Co.*, 315 F.3d at 1316; *see also Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”).

In support of the argument that the relevant goods are related, the Examining Attorney makes of record over five third-party websites that offer both “fruit juice; fruit juice beverages; vegetable-fruit juices; vegetable juice; non-alcoholic drinks, namely, energy shots” and “beverages, namely, carbonated and noncarbonated flavored sodas and drinking water” on the same websites and/or under the same marks. *See In re Ox Paperboard, LLC*, Ser. No. 87847482, 2020 WL 4530517, at *6 (TTAB 2020) (evidence of relatedness may include inter alia news articles and evidence from computer databases showing how the goods and services are provided together). For example:¹¹

- ARIZONA website offers its fruit juices, energy drinks, water and carbonated beverages;¹²
- CADIA branded fruit juices, flavored waters and sodas are sold under the brand;¹³

¹¹ Applicant argues that the Examining Attorney improperly relied on evidence from Walmart and a general grocery store brand, Essential Everyday. 6 TTABVUE 4. Notwithstanding these two references, the remainder of the Examining Attorney’s third-party evidence (over 5 third-party uses and over 10 third-party registrations), however, are not from “big box” retailers selling a wide variety of goods but rather, are single brands offering beverages included in Applicant’s and Registrant’s identification of goods. *See Ox Paperboard*, 2020 WL 4530517, at *7 (“[T]he fact that more targeted sellers offer goods of both the Registrant and the Applicant tells us that the goods are related.”).

¹² December 8, 2023 Office Action at TSDR 7-23.

¹³ *Id.* at TSDR 24-26.

- CHERRY REPUBLIC branded cherry juice and soda;¹⁴
- WELCH'S branded juices and sodas;¹⁵ and
- SPARKLING ICE branded energy drinks and fruit flavored water.¹⁶

The Examining Attorney also refers to over ten third-party use-based registrations for the relevant goods under the same mark, including:

- BYSHUI (Registration No. 6440863) for a variety of goods including blackcurrant juice, bottled artesian water, energy drinks, fruit juices, and soda water;¹⁷
- IQ2O (Registration No. 5402871) for a variety of goods including fruit drinks and fruit juices, and soda water;¹⁸
- POOL and design (Registration No. 5286796) for a variety of goods including fruit juices, sodas, and energy drinks;¹⁹
- SOUTH BAY NATURALS (Registration No. 4966617) for a variety of goods including fruit juices, energy shots, soda, vegetable juice, and water beverages;²⁰
- SLOW ISLAND and design (Registration No. 6264929) for a variety of goods including fruit juices, Italian soda, sodas, and vegetable juice;²¹
- JIMOCO (Registration No. 6471024) for a variety of goods including carbonated waters, cola drinks, energy drinks, fruit juice, mineral water, soda water, and vegetable-fruit juice;²² and

¹⁴ March 29, 2024 Final Office Action at TSDR 83-87.

¹⁵ *Id.* at 91-98.

¹⁶ *Id.* at 75-79.

¹⁷ *Id.* at 35.

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 39.

²⁰ *Id.* at 41-42.

²¹ *Id.* at 49-50.

²² *Id.* at 51-52.

- MASTIC PEARLS (Registration No. 5803828) for a variety of goods including aerated water, club soda, energy drinks, fruit juice, soda pops, sparkling water and water beverages.²³

Applicant disputes this evidence, arguing that “the Board has repeatedly cautioned that examiners, ‘must review the registrations carefully to ensure that each registration presented is probative and that the number of registrations is sufficient, along with other types of evidence, to establish that the types of goods at issue are related.’”²⁴ Applicant argues that Registration Nos. 6048907 (DR. INKERS’ CHOICE), 1366958 (DR. BROWN’S), and 5831709 (DR. MERCOLA) cited by the Examining Attorney are for sodas or fruit juice only which “demonstrate[s] that different entities tend to provide sodas from fruit juice.”²⁵ Upon review, these registrations referenced by Applicant were submitted by the Examining Attorney in connection with consumer perception of DR as an abbreviation of doctor not to show relatedness of the goods and are addressed in the previous subsection. To show relatedness of the relevant goods, the Examining Attorney submitted distinct third-party evidence which Applicant did not specifically address.²⁶

²³ *Id.* at 55-56.

²⁴ 6 TTABVUE 4 (quoting *In re Princeton Tectonics, Inc.*, Ser. No. 77436425, 2010 WL 2604976, at *4 (TTAB 2010)).

²⁵ July 1, 2024 Request for Reconsideration at TSDR 2; see March 29, 2024 Final Office Action at TSDR 9-13. Applicant makes repeated reference to Registration No. 5831709 as if the separate references are to different registration numbers and as to the three different registrations listed, contrary to Applicant’s assertions, DR. MERCOLA is for both juice and carbonated beverages. July 1, 2024 Request for Reconsideration at TSDR 2 (“U.S. Registration Nos. 5831709; 5831709; 5831709 are registered in connection with juice alone.”); March 29, 2024 Final Office Action at TSDR 13.

²⁶ See March 29, 2024 Final Office Action at TSDR 34-56.

Upon review of the Examining Attorney's third-party evidence, we find it demonstrates that several third-party entities offer Applicant's and Registrant's goods under the same marks suggesting that consumers are accustomed to seeing a single mark associated with a source that sells the relevant goods. *See Detroit Athl.*, 903 F.3d at 1306-07 (crediting relatedness evidence showing that third parties use the same mark for the goods and services at issue because "[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both"); *In re Davey Prods. Pty Ltd.*, Ser. No. 77029776, 2009 WL 2420527, at *5 (TTAB 2009) (use-based third-party registrations have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark); *In re Albert Trostel & Sons Co.*, Ser. No. 74186695, 1993 WL 596274, at *3 (TTAB 1993) (same); *Hewlett-Packard Co.*, 281 F.3d at 1267 (evidence that "a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis").

The fact that the Examining Attorney did not submit more third-party examples does not detract from the fact that this evidence reveals that "fruit juice; fruit juice beverages; vegetable-fruit juices; vegetable juice; non-alcoholic drinks, namely, energy shots" and "beverages, namely, carbonated and noncarbonated flavored sodas and drinking water" are often offered by the same party under the same mark. The Court of Appeals for the Federal Circuit and Trademark Trial and Appeal Board have long recognized that "the PTO is an agency of limited resources" for obtaining evidence when examining applications for registration; the practicalities of these limited resources are routinely taken into account when reviewing a trademark

examining attorney's action. *In re Pacer Tech.*, 338 F.3d 1348, 1352 (Fed. Cir. 2003) (citations omitted); *see also In re Loew's Theatres, Inc.*, 769 F.2d 764, 768 (Fed. Cir. 1985).

In short, the Examining Attorney's third-party evidence is sufficient to establish that Applicant's and Registrant's goods are of a type that commonly originate from the same source under the same mark. In view of the shared identical lead term DR, overall connotation, sound and commercial impression, in addition to the similarity and relatedness of the goods, the consuming public is likely to find the respective goods as coming from the same source.

Based on the foregoing, we find that this *DuPont* factor weighs in favor of a likelihood of confusion.

III. Conclusion

Having considered all evidence and argument bearing on the relevant *DuPont* factors, we find that the similarity of the marks and the relatedness of the respective goods weigh in favor of finding a likelihood of confusion.

Decision: The refusal to register Applicant's proposed mark is affirmed under Section 2(d). 15 U.S.C. § 1052(d).