

This Opinion is Not a
Precedent of the TTAB

Mailed: August 15, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Restaurant Concept Management, LLC

Serial Nos. 98051196 and 98051234

Joanna M. Myers and Samuel J. Haidle of Howard & Howard Attorneys PLLC,
for Restaurant Concept Management, LLC.

Robert Struck, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Lykos, Myles, and Stanley,
Administrative Trademark Judges.

Opinion by Myles, Administrative Trademark Judge:

Restaurant Concept Management, LLC (“Applicant”) seeks to register the
standard character mark SIDECAR SLIDER BAR (“SLIDER BAR” disclaimed)¹ and

¹ Application Serial No. 98051196, filed June 20, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming February 10, 2016 as both the date of first use anywhere and the date of first use in commerce.



the composite mark (‘SLIDER BAR’ disclaimed),² each for ‘Bar services; Catering services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services’ in International Class 43.


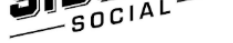
The Examining Attorney has refused registration of each of Applicant’s marks under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that Applicant’s marks, when used in connection with the above-identified services, so resemble the following marks, registered to two different owners, as to be likely to cause confusion, to cause mistake, or to deceive:

- Registration No. 4795362 for the standard character mark SIDECAR for ‘Restaurant services; Coffee shop services’ in International Class 43,³ registered to Sidecar Doughnuts LLC; and

² Application Serial No. 98051234, filed June 20, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming February 10, 2016 as both the date of first use anywhere and the date of first use in commerce. The description of the mark is as follows: ‘The mark consists of a design of a motorcycle with a sidecar and the words ‘SIDECAR’ under the picture then a dot with a dotted line and then another dot with the word ‘SLIDER BAR’ underneath[sic].’

³ Issued August 18, 2015. Section 8 and 15 declaration accepted and acknowledged.

- Registration Nos. 6681837 and 6681836 for the standard character mark

 SIDE CAR SOCIAL⁴ and ,⁵ respectively, each registered to Tips License Co., LLC, for the following services in International Class 43: “Bar services ancillary to entertainment services, namely, providing facilities for video arcades, karaoke lounges, billiards, shuffle board, table tennis, foosball, bocce ball, darts, and basketball.”

When each refusal was made final, Applicant filed a timely notice of appeal and Request for Reconsideration. When each Request for Reconsideration was denied, the appeals were resumed. Each appeal is fully briefed.

The appeals in these two applications present similar issues of fact and law and, therefore, we have considered the appeals together and issue a single decision pertaining to both applications.⁶ *In re Audemars Piguet Holding SA*, Ser. No. 90045780, 2025 WL 21318, at *3 (TTAB 2025) (because the briefs and evidentiary records in both ex parte appeals were nearly identical, and although the appeals had not been formally consolidated, the Board addressed both appeals in a single decision).

⁴ Issued March 29, 2022.

⁵ Issued March 29, 2022. The description of the mark is as follows: “The mark consists of the stylized wording ‘SIDE CAR SOCIAL’ angled upwards, the word ‘SIDE CAR’ being above the word ‘SOCIAL’ with two lines, one to the left and the other to the right of ‘SOCIAL.’”

⁶ Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system, for application Serial No. 98051196. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

All citations to documents contained in the Trademark Status & Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents for application Serial No. 98051196.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d); *quoted in In re Elster*, 602 U.S. 286, 290 (2024).

Our determination of likelihood of confusion under Section 2(d) of the Trademark Act is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

With respect to the SIDECAR SOCIAL marks, we focus our analysis on the standard character mark, because if confusion is likely between the standard character mark and Applicant’s marks for the identified services, there is no need for us to consider whether there is a likelihood of confusion with the composite stylized word and design mark; conversely, if there is no likelihood of confusion between Applicant’s marks and the standard character mark, then there would be no confusion with the composite stylized word and design mark. *In re Max Cap. Grp. Ltd.*, Ser. No. 77186166, 2010 WL 22358, at *2 (TTAB 2010).

A. Similarity or Dissimilarity of the Services and the Similarity or Dissimilarity of Established, Likely-to-Continue Trade Channels and Classes of Consumers

We first address the second and third *DuPont* factors, which consider the “similarity or dissimilarity and nature of the goods or services as described in an application or registration” and “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361; *Stone Lion Cap. Partners LP v. Lion Cap. LLP*, 746 F.3d 1317, 1318 (Fed. Cir. 2014). The goods or services “need not be identical or even competitive to find a likelihood of confusion.” *In re Country Oven, Inc.*, Ser. No. 87354443, 2019 WL 6170483, at *2 (TTAB 2019) (citations omitted). “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.’” *Id.* (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012)).

“It is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods [or services] within a particular class in the application.” *In re Aquamar, Inc.*, Ser. No. 85861533, 2015 WL 4269973, at *4 n.5 (TTAB 2015) (citing *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981)).

1. SIDECAR Registration

Applicant’s marks and the SIDECAR registration each identify “Restaurant services.” The services are therefore in-part identical.

Where the services are in-part identical, we must presume that these services are offered in the same ordinary trade channels and will be marketed to the same

potential consumers. *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...’”); see *Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 WL 2188890, at *12 (TTAB 2022) (citation omitted) (identical goods are presumed to travel in same channels of trade to same class of purchasers).

The second and third *DuPont* factors therefore weigh heavily in favor of a finding of a likelihood of confusion with respect to the SIDECAR registration.

2. SIDECAR SOCIAL Registration

The SIDECAR SOCIAL registration identifies “Bar services ancillary to entertainment services”, while Applicant’s marks identify “Bar services.” Applicant’s unrestricted “Bar services” are broad enough to include the registrant’s narrower “Bar services ancillary to entertainment services... .” See *St. Julian Wine Co.*, Ser. No. 87834973, 2020 WL 2788005, at *5 (TTAB 2020); *In re Country Oven, Inc.*, 2019 WL 6170483, at *2 (quoting *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, Con. No. 94002242, 2015 WL 4464550, at *17 (TTAB 2015) (“[w]here the identification of services is broad, the Board ‘presume[s] that the services encompass all services of the type identified’”)). On the face of the respective identifications, Applicant’s services encompass registrant’s services and the services are therefore in-part legally identical.

Because Applicant's bar services contain no restrictions, "we must presume that they will move through all channels of trade that are normal for such services and be available to all types of customers for such services, including the channels and customers appropriate to [the SIDECAR SOCIAL registrant]." *Sw. Mgmt.*, 2015 WL 4464550, at *18.

Accordingly, the second and third *DuPont* factors weigh heavily in favor of a finding of a likelihood of confusion with respect to the SIDECAR SOCIAL registration.

B. Weakness of the Cited Marks

The sixth *DuPont* factor, "[t]he number and nature of similar marks in use on similar goods," allows an applicant in an ex parte appeal to contract the scope of protection otherwise accorded a cited mark by adducing evidence of conceptual or commercial weakness. *DuPont*, 476 F.2d at 1361. "A mark's strength is measured both by its conceptual strength ... and its marketplace strength" *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010). In determining the strength of the cited marks, we consider inherent strength, based on the nature of the mark itself. *In re FCA US LLC*, Ser. No. 85650654, 2018 WL 1756431, at *13 (TTAB 2018). We also consider whether the mark has commercial weakness in the marketplace, if there is evidence in the record. *DuPont*, 476 F.2d at 1361 (the sixth *DuPont* factor considers "the number and nature of similar marks in use on similar goods."); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, Opp. No. 91157248, 2011 WL 6099691, at *9 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength). "[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, 1340 (Fed. Cir. 2015) (internal citations omitted).

1. Conceptual Strength

With respect to conceptual strength, we evaluate where the cited marks fall along the “range of increasing distinctiveness: (1) generic, (2) descriptive, (3) suggestive, (4) arbitrary, or (5) fanciful.” *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1339 (Fed. Cir. 2004).

Each of the cited marks is registered on the Principal Register without a claim of acquired distinctiveness and is therefore presumed to be inherently distinctive for the identified services, i.e., that it is at worst, highly suggestive of the identified services. 15 U.S.C. § 1057(b) (registration is “prima facie evidence of the validity of the registered mark”); see *Made in Nature, LLC*, 2022 WL 2188890, at *19 (registered marks are entitled to the presumptions afforded by Trademark Act Section 7(b) and can, at worst, be considered highly suggestive).

Merriam-Webster Dictionary defines “sidecar” as “a car attached to the side of a motorcycle for a passenger” or “a cocktail consisting of a liqueur with lemon juice and brandy.”⁷ Applicant submitted Internet evidence discussing the history of the sidecar cocktail and its popularity.⁸ Applicant argues that SIDECAR is therefore

⁷ December 12, 2024 Request for Reconsideration at 129 (merriam-webster.com/dictionary/sidecar).

⁸ *Id.* at 133-34 (Wikipedia entry for “Sidecar” cocktail) and 136-38 (Drink Magazine article “Get to know: Sidecar”).

conceptually weak when used in connection with restaurant and bar services, because it is highly suggestive of a popular cocktail served in bars and restaurants.⁹

Based on the dictionary definition, we find that “sidecar” has a highly suggestive connotation when used in connection with bar and restaurant services, because it suggests a type of cocktail served by a restaurant or bar. *See In re FabFitFun, Inc.*, Ser. No. 86847381, 2018 TTAB WL 4043156, at *5 (TTAB 2018) (considering dictionary definition of “smoking hot” in connection with conceptual weakness of SMOKIN HOT).

2. Commercial Strength

“Commercial strength ... is the marketplace recognition value of the mark.” *Spireon, Inc. v. Flex Ltd.*, 71 F. 4th 1355, 1363 (Fed. Cir. 2023) (internal citation and quotation marks omitted). Commercial strength is a question of “whether consumers in fact associate the ... mark with a unique source.” *Id.* Evidence of third-party use bears on the strength or weakness of a mark. *Juice Generation, Inc.*, 794 F.3d at 1338 (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1368, 1373 (Fed. Cir. 2005)). 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 v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1324 (Fed. Cir. 2018) (quoting *Palm Bay Imps., Inc.*, 396 F.3d at 1371).

⁹ 6 TTABVUE 14-15.

Applicant made of record the following Internet evidence¹⁰ showing use of third-party marks consisting of or containing the word SIDECAR in connection with restaurant, bar, or related services:

- SIDECAR BAR;¹¹
- THE SIDECAR BAR & GRILLE;¹²
- BAY PARK SIDECAR BAR;¹³
- SIDECAR;¹⁴
- SIDECAR PATIO OYSTER BAR,¹⁵ sidecarnola.com
- SIDECAR MOBILE BAR;¹⁶
- SIDECAR;¹⁷
- THE SIDECAR BARS;¹⁸

¹⁰ Applicant made additional examples of third-party use of record; however, in its appeal brief, Applicant states that as of the filing date of the appeal brief, two of the previously identified third-party uses “may have recently gone out of business or rebranded, bringing the number of third-party uses in the record to thirty-three (33).” 6 TTABVUE 10 n.2. While Applicant does not identify which of the third-party uses appear to no longer be in business, the following examples were provided during prosecution but not identified in Applicant’s appeal brief: SIDECAR MODERN TAVERN, sidecar7.com (May 14, 2024 Response to Office Action at 59-60); SIDECAR ON ST. GEORGE, pizzalleyschiantiroom.com/sidecar (December 12, 2024 Request for Reconsideration at 99-102).

Applicant also lists additional examples of third-party uses identified after Applicant filed its Request for Reconsideration, providing only the URLs for the third-party websites. 6 TTABVUE 10 n.2. This evidence is not properly in the record. The record in an ex parte proceeding should be complete prior to appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). If Applicant wished to make the newly identified evidence of record, the appropriate remedy would have been for Applicant to submit a request to the Board to suspend the appeals and remand the applications. 37 C.F.R. § 2.142(d)(1). Moreover, merely identifying the website by the URL is insufficient to make Internet material of record. *In re Olin Corp.*, Ser. No. 86651083, 2017 WL 4217176, at *5 n.15 (TTAB 2017) (citation omitted).

¹¹ May 14, 2024 Response to Office Action at 14-17, sidecarmeridian.com (bar).

¹² *Id.* at 18-20, thesidecarbar.com (bar and restaurant).

¹³ *Id.* at 21-22, facebook.com/sidecarbarsd (bar).

¹⁴ *Id.* at 23, sdcrbar.com/jenks (bar).

¹⁵ *Id.* at 24-25, sidecarnola.com (bar and restaurant).

¹⁶ *Id.* at 26-31, sidecarmobilebar.com (beverage catering or mobile bar).

¹⁷ *Id.* at 32-35, sidecarwinewhiskey.com (bar and restaurant).

¹⁸ *Id.* at 36, thewanderingssidecarbarco.com/the-sidecar-bars (mobile bar).

- SIDECAR BARTENDING;¹⁹
- SIDE CAR SPEAKEASY;²⁰
- SIDECAR CAFÉ;²¹
- SIDECAR COCKTAIL CATERING CO.;²²
- HARRY'S SIDECAR;²³
- SIDECAR DELIVERY;²⁴
- SIDECAR TASTING ROOM;²⁵
- SIDECAR KITCHEN;²⁶
- SIDECAR;²⁷
- SIDECAR;²⁸
- SIDECAR;²⁹
- SIDECAR;³⁰
- THE SIDECAR LOUNGE;³¹
- SIDECAR SOCIAL CLUB;³²
- SIDECAR LOUNGE;³³
- SIDECAR COCKTAIL CO.;³⁴
- SIDECAR;³⁵

¹⁹ *Id.* at 37-38, sidecarbartending.com (mobile bartending).

²⁰ *Id.* at 39-41, facebook.com/sidecardininghallandspeakeasy (bar and restaurant).

²¹ *Id.* at 42-44, thesidecarcafe.com (restaurant).

²² *Id.* at 45-47, sidecarkc.com/about (bar catering).

²³ *Id.* at 48-50, harryssidecar.com (bar and restaurant).

²⁴ *Id.* at 51-52, sidecardelivery.com (restaurant delivery).

²⁵ *Id.* at 53-55, sidecartastingroom.com (bar and restaurant).

²⁶ *Id.* at 56-58, sidecarkitchen.com (catering).

²⁷ *Id.* at 65-67, sidecarva.com (bar and restaurant).

²⁸ *Id.* at 68-69, sidecar412.com (restaurant).

²⁹ *Id.* at 70-71, barsidecar.com (bar).

³⁰ December 12, 2024 Request for Reconsideration at 77-82, yelp.com/biz/sidecar-jacksonville (bar).

³¹ *Id.* at 83-86, facebook.com/SidecarLounge (bar).

³² *Id.* at 87, sidecar-social-club-com (bar).

³³ *Id.* at 88-89, sidecardenver.squarespace.com/new-page (bar).

³⁴ *Id.* at 90, sidecarcocktail.company (bar and restaurant).

³⁵ *Id.* at 91-95, hilton.com/en/hotels/dcawhhh-washington-hilton/dining/sidecar (bar and restaurant).

- SIDECAR MARKET;³⁶
- SIDECAR JAX;³⁷
- SIDECAR GAINESVILLE;³⁸
- SIDECAR SPEAKEASY;³⁹
- SIDECAR SUPPER CLUB;⁴⁰
- THE SIDECAR;⁴¹
- THE SIDECAR AT THE TAP;⁴² and
- SIDECAR NYC;⁴³

We find that these thirty-three (33) third-party uses identified above show that SIDECAR is widely used in connection with both restaurant and bar services. While Applicant did not present specific evidence concerning the extent and impact of these third-party uses, Applicant's Internet printouts "on their face, show that the public may have been exposed to those [I]nternet websites and therefore may be aware of the advertisements contained therein." *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, Opp. No. 91172486, 2011 WL 810221, at *5 (TTAB 2011). This third-party evidence is "powerful on its face," and shows a strong degree of marketplace weakness for SIDECAR in connection with bar and restaurant services, and that SIDECAR is accordingly entitled to a narrower scope of protection under the sixth *DuPont* factor. *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium*

³⁶ *Id.* at 96-98, sidecar-market.com (bar).

³⁷ *Id.* at 103, facebook.com/profile.php?id=61567570334254 (bar).

³⁸ *Id.* at 104-05, facebook.com/sidecargainesville (bar and restaurant).

³⁹ *Id.* at 106, Instagram.com/sidecarspeakeasy901?hl=en (bar).

⁴⁰ *Id.* at 107-08, sidecarsupperclub.com (bar and restaurant).

⁴¹ *Id.* at 109, copperspoonfw.com/sidecar (restaurant and bar).

⁴² *Id.* at 110-12, sidecarmpls.com (bar).

⁴³ *Id.* at 113, pjclarkes.com/location/sidecar-nyc (restaurant).

Sports, S.L.U., 797 F.3d 1363, 1374 (Fed. Cir. 2015) (citation omitted) (finding that at least fourteen examples of third-party use or registration of similar marks for similar goods was “extensive”); *Juice Generation*, 794 F.3d at 1336 (finding that the “Board gave inadequate consideration” to the strength or weakness of the opposer’s mark where there were at least twenty-six examples of third-party use or registration in the record for similar marks for similar services and explaining that “[t]he 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”).

3. Summary on Weakness of the Cited Marks

The dictionary evidence and extensive evidence of third-party use shows that the term SIDECAR is commercially and conceptually weak when used in connection with bar or restaurant services and therefore it is entitled to a narrower scope of protection. The sixth *DuPont* factor therefore weighs heavily against a finding of a likelihood of confusion.

C. Similarity or Dissimilarity of the Marks

“Under the first *DuPont* factor, we consider ‘the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 WL 6072822, at *13 (TTAB 2021) (quoting *Palm Bay Imps., Inc.*, 396 F.3d at 1371). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Id.* (quoting *In re Inn at St. John’s, LLC*, Ser. No. 87075988, 2018 WL 2734893, at *5 (TTAB 2018), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019)

(internal quotation omitted)). We do not predicate our analysis on a dissection of the respective marks, but consider them in their entirety. *Stone Lion*, 746 F.3d at 1321. One feature of a mark may be more significant than another, however, and it is not improper to give more weight to a dominant feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re Charger Ventures LLC*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) (it is permissible for the Board “to focus on dominant portions of a mark”); *In re Chatam Int’l*, 380 F.3d 1340, 1343-44 (Fed. Cir. 2004).

“Similarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 1344 (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.’” *Sabhnani*, 2021 WL 6072822, at *14 (quoting *Cai*, 901 F.3d at 1373 (internal quotation omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of the marks. *In re Bay State Brewing Co., Inc.*, Ser. No. 85826258, 2016 WL 1045677, at *2 (TTAB 2016) (citation omitted).

1. SIDECAR Registration

Applicant’s SIDECAR SLIDER BAR mark incorporates the entirety of the SIDECAR cited mark and adds only descriptive and disclaimed wording. Marks must be examined in their entirety, including any disclaimed wording. *See In re Detroit*

Athletic Co., 903 F.3d 1297, 1305 (Fed. Cir. 2018) (“The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO. ... Thus, the Board must consider the mark in its entirety, including the disclaimed portion.”) (internal citations and punctuation omitted). Generally, however, adding descriptive wording to an identical mark does not obviate a finding that such marks are similar. *See In re Detroit Athl. Co.*, 903 F.3d at 1303-04.

“However, an exception to the general rule is often found when, inter alia, the matter shared by the two marks is merely descriptive or commonly used or registered.” *Henry I. Siegel Co. v. M. & R Int’l Mfg. Co.*, 1987 WL 123838, at *7 (TTAB 1987); *In re Hunke & Jochheim*, 1975 WL 20781, at *2-3 (TTAB 1975). Where a common element shared by the marks is weak, the addition of even descriptive matter may be sufficient to distinguish an applicant’s mark from a cited mark. *See In re Bed & Breakfast Registry*, 791 F.2d 157, 159 (Fed. Cir. 1986) (“The record shows that a large number of marks embodying the words ‘bed and breakfast’ are used for similar reservation services, a factor that weighs in favor of the conclusion that BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL are not rendered confusingly similar merely because they share the words ‘bed and breakfast.’”); *In re Hartz Hotel Servs., Inc.*, Ser. No. 76692673, 2012 WL 1193704, at *4-5 (TTAB 2011) (numerous third-party uses of GRAND HOTEL marks for hotel

services show that consumers distinguish between these marks even though the only distinguishing element is a geographically descriptive term).

As explained above, SIDECAR is commercially and conceptually weak for restaurant services and the scope of protection to which the cited registration is entitled is more limited. While even weak marks are entitled to protection against registration of similar marks for similar or identical services, *In re Max Cap. Grp.*, 2010 WL 22358 at *4, here we find that Applicant's marks and the cited SIDECAR mark are sufficiently dissimilar. Given the extensive third-party use of SIDECAR in connection with restaurant services, we find that consumers are likely to look to the additional elements to distinguish the marks, even where the additional elements are descriptive or otherwise weak. The addition of SLIDER BAR, although descriptive, serves to alter the appearance, meaning, and commercial impression of Applicant's SIDECAR SLIDER BAR mark.

Applicant's composite mark adds another point of differentiation, namely, the addition of the prominent design element featured above the words, which calls to mind the meaning of a motorcycle "sidecar" as opposed to the "sidecar" cocktail.

Considering the marks in their entireties, we find that, in light of the extensive evidence of third-party use of SIDECAR in connection with restaurant and related services, Applicant's addition of SLIDER BAR in both marks and the design element in Applicant's composite mark, is sufficient to render the marks distinguishable and dissimilar, even if used in connection with the identical services. *See In re Hartz Hotel*

Servs., 2012 WL 1193704, at *4-5. The first *DuPont* factor therefore weighs against a finding of a likelihood of confusion with respect to the cited SIDECAR mark.

2. SIDECAR SOCIAL Registration

The SIDECAR SOCIAL mark and each of Applicant's marks share only the highly suggestive and commonly used word "sidecar." Here, the cited mark contains the additional, distinctive word SOCIAL, and Applicant's marks contain the additional words SLIDER BAR. Given the extensive third-party use of SIDECAR in connection with bar services, we find that consumers are likely to look to the additional elements to distinguish the marks, even where the additional elements are descriptive or otherwise weak. SOCIAL and SLIDER BAR are not similar in sound, appearance, or meaning, whether considered separately or in combination with SIDECAR. *In re Bed & Breakfast Registry*, 791 F.2d at 159 ("The words 'registry' and 'international' do not have the same meaning, either alone or in combination with the term 'bed and breakfast.'").

With respect to Applicant's composite mark, as explained above, the design element of Applicant's mark is featured prominently and provides an additional point of distinction between Applicant's mark and the cited mark, again calling to mind a motorcycle "sidecar," as opposed to a "sidecar" cocktail.

Considering the marks in their entireties, we find that, in light of the extensive evidence of third-party use of SIDECAR in connection with bar and related services, Applicant's addition of SLIDER BAR in both marks and the design element in Applicant's composite mark is sufficient to render the marks distinguishable and

dissimilar, even if used in connection with the identical services. *See In re Hartz Hotel Servs.*, 2012 WL 1193704, at *4-5. The first *DuPont* factor therefore weighs against a finding of a likelihood of confusion with respect to the cited SIDECAR SOCIAL mark.

D. Length of Coexistence and Absence of Actual Confusion

Applicant argues that its marks have coexisted with the SIDECAR mark and the SIDECAR SOCIAL mark for nine and five years, respectively, without evidence of actual confusion.⁴⁴ The seventh *DuPont* factor considers “[t]he nature and extent of any actual confusion” and the eighth *DuPont* factor considers “[t]he length of time during which and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 476 F.2d at 1361. “[A] showing of actual confusion is not necessary to establish a likelihood of confusion.” *Herbko Int’l v. Kappa Books*, 308 F.3d 1156, 1164 (Fed. Cir. 2002). In the context of an ex parte appeal, where there has been no opportunity for evidence of actual confusion to be presented by the registrants, the probative value of evidence purporting to show the absence of actual confusion is limited. *See In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (“The lack of evidence of actual confusion carries little weight, especially in an ex parte context.”) (internal citation omitted). “The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by applicant of its mark for a significant period of time in the same markets as those served by [registrant] under its marks.” *Citigroup, Inc. v. Cap. City Bank Grp., Inc.*, Opp. No. 91177415, 2010 WL 595586, at *17 (TTAB 2010), *aff’d*

⁴⁴ 6 TTABVUE 20-21.

637 F.3d 1344 (2011). There is no such evidence of record here. Therefore, these factors are neutral in our analysis.

II. Weighing the Factors

Having considered and weighed all of the arguments and evidence of record and the relevant likelihood of confusion factors, we find that, although the services are in-part identical and presumed to travel in the same channels of trade and to the same classes of consumers, in view of the highly suggestive nature of the common SIDECAR element, and the existence of extensive third-party marketplace use, the differences between the marks is sufficient that consumers would be able to distinguish Applicant's marks from each of the cited marks, such that confusion is unlikely. *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) (finding that there are instances where a single *DuPont* factor may be dispositive and outweigh other factors).

Decision: The Section 2(d) refusal is reversed as to both application Serial Nos. 98051196 and 98051234.