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Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mae Daly's Events LLC

Serial No. 98126095

Mary L. Grieco of Olshan Frome Wolosky LLP,
for Mae Daly's Events LLC.

Tasneem Hussain, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

Before Greenbaum, Goodman, and Casagrande,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Mae Daly's Events LLC ("Applicant") seeks registration on the Principal Register of the mark MAE DALY'S (in standard characters) for "Restaurant services; bar services; catering services" in International Class 43.¹

¹ Application Serial No. 98126095 was filed on August 10, 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. The name MAE DALY does not identify a living individual.

Page references to the application record are to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's main brief is at 6 TTABVUE and its reply brief is at 9 TTABVUE; the Examining Attorney's brief is at 8 TTABVUE.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark is likely to cause confusion with the mark DALY (typed drawing) for "Restaurant services" in Class 42.²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. 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, or to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) 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*

As part of an internal Board pilot citation program on possibly broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03(a) (2024). For decisions of the Board, this opinion employs citation to the Lexis database. This opinion also cites to the Federal Reporter.

² Registration No. 0880153, third renewal, Section 8 and 9 accepted December 28, 2018. The restaurant services are classified in Class 42, rather than Class 43, because the registration issued in 1969 prior to the reclassification by the Nice Agreement of restaurant services in Class 43, implemented in 2002. The registered mark is in typed form, which is the predecessor to, and legal equivalent of, a standard character mark. *See In re Viterro Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012) ("until 2003, 'standard character' marks formerly were known as 'typed' marks."); *see also* 37 C.F.R. § 2.52(a) (referring to "Standard character (typed) drawing").

E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). 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); *In re Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *2 (TTAB 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *See 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, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and others, are discussed below.

A. Similarity or Dissimilarity of the Services

The second *DuPont* factor considers “[t]he similarity or dissimilarity and nature of the goods [or services] as described in an application or registration.”³ *DuPont*, 476 F.2d at 1361.

In determining the similarity or dissimilarity of the services, we must focus on the services as they are identified in the involved application and the cited registration. *See In re i.am.symbolic, llc*, 866 F.3d at 1327; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Comp. Servs.*

³ In arguing that the services are identical in part, the Examining Attorney points out that Applicant does not address this factor in its brief. 8 TTABVUE 6.

Inc., 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of services within a particular class in the application or registration.⁴ See *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

To reiterate, Applicant's services are "Restaurant services; bar services; catering services" and Registrant's services are "Restaurant services." In view of both marks identifying restaurant services, the services are identical in part. The second *DuPont* factor weighs heavily in favor of likelihood of confusion.

B. Trade Channels

We consider the "similarity or dissimilarity of established, likely-to-continue trade channels."⁵ *DuPont*, 476 F.2d at 1361. We also consider the classes of consumers for Applicant's and Registrant's services, *id.* which is the general public. There are no restrictions in Applicant's and Registrant's identifications of services as to the channels of trade. Applicant's and Registrant's restaurant services are in-part identical and we must presume these services will be offered in the same trade channels customary for such services and offered to the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d at 1362 (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this

⁴ We confine our analysis to restaurant services in the application. The Examining Attorney also included third-party registration evidence relating to bar and catering services and restaurant services. Apr. 11, 2024 Office Action at TSDR 3-11. As indicated, likelihood of confusion may be found if it exists with respect to any of Applicant's services and the restaurant services in the cited registration. See *Tuxedo Monopoly*, 648 F.2d at 1336.

⁵ The Examining Attorney addressed this factor under the discussion of relatedness of the services. 8 TTABVue 5. Applicant did not address this factor either.

legal presumption in determining likelihood of confusion for identical goods); *see also Genesco Inc. v. Martz*, 2003 TTAB LEXIS 123, at *28 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.”).

C. Third-party Use of DALY/DALY’S

The sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods,” *DuPont*, 476 F.2d at 1361, “is a measure of the extent to which other marks weaken the assessed mark.” *Spireon Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005)). There are two types of strength: conceptual and commercial.⁶ *Id.* (citing *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010)). The strength of the cited mark affects the scope of protection to which a mark is entitled.

Evidence of third-party use bears on the strength or weakness of a mark. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015) (citing *Palm Bay Imps.*, 396 F.3d at 1373). “[T]he purpose of a defendant introducing third-party uses 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

⁶ As is normally the case in ex parte proceedings, the fifth *DuPont* factor is neutral. *See In re Thomas*, 2006 TTAB LEXIS 135, at *18 n.11 (TTAB 2006).

such marks on the bases of minute distinctions.” *Palm Bay Imps.*, 396 F.3d at 1373 (citation omitted). Evidence of third-party registrations for marks “on similar goods [or services] can bear on a mark’s conceptual strength.” *Spireon*, 71 F.4th 1363 (citing *Juice Generation*, 794 F.3d at 1339). Applicant references its evidence of third-party use and argues that DALY/DALY’S is a crowded field and the marks can co-exist. 6 TTABVUE 17-18; 9 TTABVUE 4, 5; October 30, 2024 Request for Reconsideration at TSDR 162- 263; July 11, 2024 Response to Office Action at TSDR 13-70.⁷ Applicant argues that “[b]ecause the public is used to seeing trademarks for restaurants that contain common surnames, the public will not likely believe that a restaurant marked with MAE DALY’S and a restaurant marked with DALY come from the same source...”⁸ 6 TTABVUE 16-17.

The third party uses in connection with restaurant services are as follows:⁹

DALY’S ON YATES at (Schenectady, NY, October 30, 2024 Request for Reconsideration at TSDR 164);

DALEY’S RESTAURANT (Chicago, IL, *id.* at 170);

THE DALY (Honolulu, Hawaii, *id.* at 173);

DALY’S BAR & GRILL (Sun Prairie, WI, *id.* at 175);

DALY’S BAR (South Buffalo, NY, *id.* at 183);

⁷ Applicant submitted evidence of Registrant’s use in October 30, 2024 Request for Reconsideration at TSDR 62. These webpages also were submitted with Applicant’s July 11, 2024 Response to Office Action at TSDR 3.

⁸ Applicant did not submit any third-party registration evidence for marks containing the term DALY/DALY’S.

⁹ October 30, 2024 Request for Reconsideration at TSDR 162-144. Applicant initially submitted seven examples of third-party use in the July 11, 2024 Response to Office Action at TSDR 13-70; five of these examples were resubmitted on reconsideration.

DALY'S FRAME BROILED BURGERS (Seminole, Florida, *id.* at 197);

DALY'S PUB (Astoria, NY, *id.* at 199);

DALY'S PUB (Sandusky, Ohio, *id.* at 201);

DALY'S SPORTS BAR, (Philo, IL, *id.* at 207);

JOXER DALY'S (Culver City, CA, *id.* at 210);

JOHN DALY'S RESTAURANT AND BAR (location unknown, *id.* at 220);

DALY'S PUB & REC (Park City, UT, *id.* at 232);

DALY'S IRISH PUB (Northeast Philly, July 11, 2024 Response to Office Action at TSDR 56); and

DALY'S DINER (Snowmass, Colorado, *id.* at 59).

We find that DALY/DALY'S are frequently used in connection with restaurant services. This third-party use evidences some commercial weakness of the term. *See, e.g., Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 2020 TTAB LEXIS 269, at *55 (TTAB 2020) (six local Brooklyn-formative named establishments' use of the term "Brooklyn" in connection with beer sales have significant probative value as to commercial weakness), *aff'd in relevant part; rev'd in part, vacated in part on other grounds*, 17 F.4th 129 (Fed. Cir. 2021); *In re FabFitFun*, 2018 TTAB LEXIS 297, at *15 (TTAB 2018) (ten third-party use examples of "SMOKIN' HOT formatives," along with a dictionary definition, deemed evidence that mark was "somewhat weak"); *Tao Licensing LLC v. Bender Consulting Ltd.*, 2017 TTAB LEXIS 437, at *47-49 (TTAB 2017) (considering United States third-party use (webpages) of "TAO-formative names" in connection with restaurant services and alcoholic beverages as evidence of commercial weakness of TAO under the sixth *DuPont* factor).

We weigh any commercial weakness of the term DALY/DALY'S into our analysis involving the similarity of the marks and ultimately into our conclusion whether there is likelihood of confusion. The sixth *DuPont* factor weighs against likelihood of confusion.

D. Third-party Registrations of Marks Dissimilar to Applicant's and Registrant's Marks for Restaurant Services

Applicant argues that

“it is very common in the restaurant industry for restaurants to have trademarks that use the same last names as other restaurants. There are countless instances of registrations in Class 43 (as well as in other related classes) that share a common surname, just as Applicant's mark shares a common surname with the Cited Mark.”

6 TTABVUE 11.

Applicant relies on the co-existence of numerous third-party registrations for restaurant services for marks containing the same surname, other than DALY, combined with other terms: Sullivan marks, Smith marks, Romano marks, Lee marks, Miller marks, Martin marks, Garcia marks, Clark marks, Adams marks, Murphy marks, Johnson marks, and Brown marks, all owned by separate entities, to illustrate this point. October 30, 2024 Request for Reconsideration at TSDR 12-161. Applicant submits that the public will not be confused because of restaurant industry practice. 6 TTABVUE 16.

“We note that ‘the third-party registrations relied on by applicant cannot justify the registration of another confusingly similar mark.’” *In re Toshiba Med. Sys. Corp.*, 2009 TTAB LEXIS 447, at *19 (TTAB 2009) (citations omitted). In this regard, prior

decisions and actions of other examining attorneys in registering other different marks have little evidentiary value and are not binding upon the USPTO or the Board. *In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court”). It has been noted many times that each case is decided on its own facts, and each mark stands on its own merits. *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1568 (Fed. Cir. 1984); *In re Binion*, 2009 TTAB LEXIS 701, at *16 (TTAB 2009).

Since none of these registrations include the term DALY or DALY’S, they have no persuasive value in our determination of whether the use of DALY with a personal name is so prevalent in the restaurant industry that marks including the term are entitled to only a limited scope of protection. *See In re Toshiba Med. Sys. Corp.*, 2009 TTAB LEXIS 447, at *19 (evidence that six pairs of registrations for similar marks for MRI and ultrasound equipment registered that are different than the involved and cited mark cannot justify the registration of another confusingly similar mark). In particular, the marks provided by the third-party registrations “are so different from the present case that, even if they were relevant, they would merely stand for the principle that the Office determines each case on its own merits.” *In re Embiid*, 2021 TTAB LEXIS 168 at *50-52 (TTAB 2021) (TTAB 2021) (“The ‘paired’ COBRA and SOLE marks here similarly are so different from the involved marks TRUST THE PROCESS as to have no probative value.”).

E. 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.*, 396 F.3d at 1371 (citing *DuPont*, 476 F.2d at 1361). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re Davia*, 2014 TTAB LEXIS 214, at *4 (TTAB 2014).

The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general, rather than specific, impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 2014 TTAB LEXIS 166, at *17 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 1975 TTAB LEXIS 236, at *6 (TTAB 1975). Additionally, “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

Applicant’s mark is MAE DALY’S. The cited mark is DALY.

Applicant asserts that its mark is distinguished by the possessive form which signifies “to the public that the restaurant ‘belongs’ to someone named Mae Daly.” 6 TTABVue 10. However, the addition of the apostrophe and letter “s” to DALY to

create the possessive form DALY'S has little significance as a distinguishing term in the marks. *See Southwestern Mgmt. v. Ocinomled, Ltd.*, 2015 TTAB LEXIS 176, at *58 (TTAB 2015); *In re Binion*, 2009 TTAB LEXIS 701, at *8 (noting that “[t]he absence of the possessive form in applicant’s mark ... has little, if any, significance for consumers in distinguishing it from the cited mark”).

The marks are similar in appearance and sound as to the shared term DALY. Applicant points out that its mark is two words while Registrant’s mark is one word, 6 TTABVUE 10, which are points of dissimilarity in sound and appearance between the marks. However, consumers are not going to dissect the competing trademarks into discrete points of similarity and dissimilarity as they are not considered side by side, *see, e.g., In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (“marks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison”) (cleaned up; citation omitted); rather, they will focus on the overall commercial impression created by the marks.

In comparing MAE DALY'S with DALY, we note that Applicant’s mark encompasses the entirety of the registered mark, making the marks similar. Likelihood of confusion often has been found where the entirety of one mark is incorporated within another. *See, e.g., Hunter Indus., Inc. v. Toro Co.*, 2014 TTAB LEXIS 105, at *33 (TTAB 2014) (PRECISION and PRECISION DISTRIBUTION CONTROL found similar).

As to connotation, Applicant submits that its mark is a women’s name, “a legendary person in Las Vegas history” while Registrant’s mark is derived from “the

name of the street where the original DALY restaurant opened ('Jim Daly Road')," referencing evidence in the record referring to the origins of Applicant's and Registrant's marks. 6 TTABVUE 10; 9 TTABVUE 3; July 11, 2024 Response to Office Action at TSDR 4, 8. According to website information provided by Applicant, DALY restaurant was named based on the restaurant location on Jim Daly road (Registrant's website), while MAE DALY is a woman who opened a saloon in Las Vegas in 1928 serving whiskeys and steaks, though there is no documented evidence that she actually existed (Applicant's website). July 11, 2024 Response to Office Action at TSDR 4, 8. Although Applicant argues that DALY in Registrant's mark refers to a road, it is apparent the road is named after an individual. The record evidence (third-party use) submitted by Applicant indicates that DALY has surname significance. October 30, 2024 Request for Reconsideration at TSDR 162-244; July 11, 2024 Response to Office Action at TSDR 13-70. *See Somerset Distilling Inc. v. Speymalt Whisky Distribs. Ltd.*, 1989 TTAB LEXIS 60, at *10-11 (TTAB 1989) ("the third-party registrations of marks containing the word 'GORDON' show that 'Gordon' has a surname significance").

Registrant's mark, DALY, suggests a surname, while MAE DALY's suggests a full name. Applicant argues that consumers are inclined to focus on the first word in Applicant's mark, making MAE a consumer's focus. 6 TTABVUE 10. Although MAE is the first term in Applicant's mark, we find that DALY'S is the more significant term in Applicant's mark.

“Applicant has added the given name [MAE] to its mark, but the addition of a given name to a recognizable surname has limited distinctive capability. A surname preceded by a given name is a common, highly conventional combination of word elements, and the mark [MAE DALY’S] could well be interpreted as a more specific reference to a person or company that is otherwise identified by the designation [DALY].” *Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 2014 TTAB LEXIS 284, at *103-104 (TTAB 2014) (citing *In re Chatam Int’l, Inc.*, 380 F.3d 1340, 1341 (Fed. Cir. 2004) (“the first name JOSE modifies the surname GASPAR and serves to emphasize that GASPAR is a name”; JOSE GASPAR GOLD likely to be confused with GASPAR’S ALE); *In re SL&E Training Stable Inc.*, 2008 TTAB LEXIS 55, at *11 (TTAB 2008) (“The first name ‘Sam’ in applicant’s mark modifies the surname ‘Edelman,’ in effect, telling which Edelman it is, and therefore emphasizes the ‘Edelman’ portion.” SAM EDELMAN likely to be confused with EDELMAN); *Audemars Piguet, Ltd. v. Hammerman Bros., Inc.*, 1974 TTAB LEXIS 40, at *3 (TTAB 1974) (in comparing the marks AUDEMARS PIGUET and PIQUETTE, the Board stated “it is not believed that the addition of the given name to opposer’s mark is sufficient to distinguish these marks”); *Somerset Distilling Inc.*, 1989 TTAB LEXIS 60, at *10 (JAS. GORDON likely to be confused with GORDON’S)); *see also Modern Shoe Co. v. B. B. Walker Shoe Co.*, 1971 TTAB LEXIS 131, at *6 (TTAB 1971). (“We have here a surname ‘WALKER’ and a full name ‘JOHNNIE WALKER.’ The full name would represent an individual. The surname ‘WALKER’ does not per se identify

any particular individual but it does identify any and all persons who bear that surname, including ‘JOHNNIE WALKER.’”).

Applicant argues that “[b]ecause the public is used to seeing trademarks for restaurants that contain common surnames, the public will not likely believe that a restaurant marked with MAE DALY’S and a restaurant marked with DALY come from the same source” as they are capable of distinguishing between them. 6 TTABVUE 11, 16-17; 9 TTABVUE 4. Applicant submits it is unlikely consumers will refer to its restaurant as DALY or DALY’S. 6 TTABVUE 10-11. However, consumers have a penchant for shortening names. In *Modern Shoe Co.*, 1971 TTAB LEXIS 131, at *6, the Board stated:

it is not uncommon to identify an individual by a surname without reference to a first or Christian name, for example Nixon or Rockefeller in reference to well-known political figures. Thus, ‘WALKER’ and ‘JOHNNIE WALKER’ could be regarded as one and the same individual. These names when used as marks will create the same impression and such impression is greatly enhanced because they are used on directly competitive goods, even as to price. We are of the opinion that the circumstances give rise to a likelihood of confusion.

That observation fits here. Therefore, when we consider the marks in their entirety, we find the marks are similar in appearance, sound, connotation, and commercial impression.

The first *DuPont* factor weighs in favor of likelihood of confusion.

F. The Lack of Actual Confusion

The eighth *DuPont* factor considers the “length of time during and conditions under which there has been concurrent use without evidence of actual confusion,” *DuPont*, 476 F.2d at 1361.

Applicant references Yelp and Open Table review pages it submitted for MAE DALY’S and asserts that “[t]hese reviews demonstrate that consumers are clearly not confusing Applicant’s Mark with any of the other DALY-formative marks.” October 30, 2024 Request for Reconsideration at TSDR 245-263; July 11, 2024 Response to Office Action at TSDR 72-80. However, these reviews discuss only the consumers’ experience with Applicant’s restaurant and are not probative of a lack of actual confusion with Registrant’s mark. *See In re Detroit Athl. Co.*, 903 F.3d 1297, 1309 (Fed. Cir. 2018) (“the online reviews reference consumers’ experiences with one company or the other, but not both. Neither piece of evidence establishes a lack of consumer confusion in other, more commercially meaningful contexts.”).

The eighth *DuPont* factor is neutral.

II. Conclusion

The first and second *DuPont* factors weigh heavily in favor of likelihood of confusion. The identical-in-part channels of trade and classes of customers also heavily favor a likelihood of confusion. The eighth *DuPont* factor is neutral. The sixth *DuPont* factor weighs against. But in weighing the impact of the sixth factor, we keep in mind that “even weak marks are entitled to protection against registration of similar marks” for similar services. *In re Colonial Stores, Inc.*, 1982 TTAB LEXIS

116, at *8 (TTAB 1982); *see also Conde Nast Publ'ns, Inc. v. Miss Quality, Inc.*, 507 F.2d 1404, 1406 (CCPA 1975) (“[T]he decisive question is whether there is a likelihood of confusion, mistake, or deception for purposes of 15 U.S.C. § 1052(d). Therefore, if there is such likelihood, that ends the matter whether appellant’s mark be termed ‘weak’ or ‘strong.’”). In view of the in-part identical services, overlapping trade channels and classes of customers, and the similar marks, we find, on balance, that confusion is likely.

Decision: The refusal to register Applicant’s mark MAE DALY’S is affirmed.