

This Opinion is not a
Precedent of the TTAB

Mailed: May 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re All Strong Industry (USA) Inc.
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Serial No. 98293359
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Gene Bolmarcich of Law Offices of Gene Bolmarcich,
for All Strong Industry (USA) Inc.

Kristina Krass, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Goodman, English and Stanley,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

All Strong Industry (USA) Inc. (“Applicant”) seeks registration on the Principal Register of the mark GREEN LIVING (in standard characters, GREEN disclaimed) for “Indoor window blinds” in International Class 20.¹

¹ Application Serial No. 98293359 was filed on November 30, 2023, based upon Applicant’s assertion 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).

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

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),² on the ground that Applicant's mark is likely to cause confusion with the mark LIVINGREEN (in standard characters) identifying "Furniture; furniture, namely, mirrors, tables, desks, chairs; picture frames" in International Class 20; and "Textile materials, namely, bed sheets, towels, table linen, and upholstery fabrics" in International Class 24.³

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the

refer to the Board's TTABVUE docket system. Applicant's brief is at 4 TTABVUE, its Reply brief is at 7 TTABVUE, and the Examining Attorney's brief is at 6 TTABVUE.

As part of an internal Board pilot program, this opinion uses citations to the LEXIS legal database for decisions of the Board and cites only precedential decisions, unless otherwise noted. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03(a)(2) (2024) for acceptable citation forms to TTAB cases. This opinion also cites to the Federal Reporter.

² The Examining Attorney also issued a Section 2(e)(1) refusal which was later withdrawn. November 22, 2024 Office Action at TSDR 1. The Examining Attorney then required a disclaimer of the term GREEN, which Applicant provided. *Id.* Applicant also amended its initial identification of goods, deleting "Fabric window blinds; Indoor window blinds being shades; Indoor window blinds of textile; Indoor window blinds of woven wood; Interior window blinds; Interior textile window blinds; Metal indoor window blinds; Non-metal child safety products, namely, string and cord winders for use on blinds, curtains, drapes, window coverings, and door coverings; Slatted indoor blinds for windows." July 12, 2024 Response to Office Action at TSDR 2.

³ Registration No. 3165993, issued October 31, 2006, partial Section 8; first renewal May 5, 2016.

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 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 are discussed below.

A. Similarity or Dissimilarity of the Goods

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

In determining the similarity or dissimilarity of the goods, we must focus on the goods 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. 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 goods within a particular class in the application or registration. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981).

The goods need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 2007 TTAB LEXIS 58, at *28-29 (TTAB 2007)).

Evidence that “a single company sells the goods ... of both parties, if presented, is relevant to a relatedness analysis.” *Hewlett-Packard Co.*, 281 F.3d at 1267; *see also In re Embiid*, 2021 TTAB LEXIS 168, at *39 (TTAB 2021) (evidence of third-parties offering goods of both applicant and registrant pertinent to relatedness of the goods).

Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods are used together or used by the same purchasers; advertisements showing that the relevant goods are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both an applicant’s goods (or similar goods) and the goods (or similar goods) listed in the cited registration. *See, e.g., In re Country*

Oven, Inc., 2019 TTAB LEXIS 381, at *5; *In re Davia*, 2014 TTAB LEXIS 214, at *19 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

The Examining Attorney provided active third-party registration evidence based on use (July 9, 2024 Office Action at TSDR 2-8 and January 7, 2025 Office Action at TSDR 2-18) to show relatedness.⁴ Third-party registrations are relevant to our relatedness determination to the extent that they suggest the listed goods are of a type that may emanate from a single source. *In re Albert Trostel & Sons Co.*, 1993 TTAB LEXIS 36, at *7 (TTAB 1993).

To reiterate, Applicant's goods are "Indoor window blinds"⁵ and Registrant's goods are "Furniture; furniture, namely, mirrors, tables, desks, chairs; picture frames" in International Class 20; and "Textile materials, namely, bed sheets, towels, table linen, and upholstery fabrics."

⁴ The Examining Attorney also provided some internet evidence of home retailers CRATE & BARREL, WEST ELM, and POTTERY BARN offering drapes or window shades, or window blinds and furniture, and furniture store ETHAN ALLEN offering furniture, windows shades, and blinds. January 7, 2025 Office Action at TSDR 23, 24 26, 27, 29, 30. Some of the goods shown in this evidence have been deleted from Applicant's identification. In the reply brief, Applicant criticizes the evidence from large retailers and points out that "it is not at all clear that the relevant goods corresponding to applicant's and registrant's goods are sold under the same brand." 7 TTABVUE 3.

⁵ The Examining Attorney submitted a definition of "blind" which is defined as a "window shutter" or "roller window blade" and "venetian blind." MERRIAM-WEBSTER DICTIONARY (merriam-webster.com). January 7, 2025 Office Action at TSDR 32.

Some of the third-party registration evidence shows registrants offering furniture and indoor window blinds.⁶ The Examining Attorney also provided third-party registration evidence showing registrants offering indoor window blinds and towels or types of towels (kitchen or bath).⁷

We find the third-party registration evidence supports a finding of relatedness in part for indoor window blinds (Applicant's goods) and Registrant's Class 20 furniture and Class 24 towels.

The relatedness of the goods weighs in favor of 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. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005). 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.

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

⁶ Reg Nos. 7060443, 6303127, 6257778, 6319792, 7408823, 6433770, 6561922, 4987039. January 7, 2025 Office Action at TSDR 2, 3, 5, 6, 12, 13, 14, 15. The Examining Attorney also provided Reg. No. 7111392 for indoor window blinds and bamboo furniture at TSDR 7 and Reg. No. 6053688 for indoor window blinds and furniture of metal at TSDR 9; the furniture goods identified by these registrations are encompassed by Registrant's more broadly worded "furniture."

⁷ Reg. Nos. 7381694, 5156051, 5679847, 6376481 and 7496265. January 7, 2025 at TSDR 4, 8, 10, 11, 16. Kitchen towels and bath towels are encompassed by Registrant's more broadly worded "towels."

marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs.*, 668 F.3d at 1368. 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).

The marks are LIVINGREEN (Registrant's mark), and GREEN LIVING (Applicant's mark).

Applicant argues that the marks are distinctly different and distinguishable because Registrant's mark is a "unique combination" of a blended unitary mark which contains the slang word "livin," while Applicant's mark is a two-word mark. 4 TTABVUE 4. Applicant submits that the term "livin" in Registrant's mark has a different connotation from "living" in Applicant's mark and the terms are not interchangeable. *Id.* at 4-5.

The Examining Attorney disagrees, arguing that "consumers are likely to see the marks as being two identical terms in a transposed and telescoped format," 6 TTABVUE 6, and that "the meaning and overall commercial impression of the marks, GREEN LIVING and LIVINGREEN, is not changed by the transposition of terms." *Id.* at 5.

Registrant's LIVINGREEN mark is a telescoped mark that comprises two or more words that share letters. Even though the letter "G" is shared by both terms in

Registrant's mark, it is readily apparent that LIVINGGREEN is the equivalent of LIVING GREEN. We find the difference between "livin" and "living" in the telescoped mark immaterial. *See In re Wells Fargo & Co.*, 1986 TTAB LEXIS 130, at *4 (TTAB 1986) ("Since the telescoping [of EXPRESSERVICE] would be readily apparent to any intelligent person, this fact is immaterial to the issue before us") (citing *In re United States Steel Corp.*, 1985 TTAB LEXIS 119, at *1-2 (TTAB 1985) ("The word portion ... SUPEROPE, consists of two ordinary words in the English language which have been telescoped to form a single term. This fact would be readily apparent to any intelligent person, hence the telescoping is immaterial to the issue which is before us.")). *See also In re Greenliant Sys., Ltd.*, 2010 TTAB LEXIS 416, at *14 (TTAB 2010) ("It is clear from the evidence that the term NANDRIVE would be recognized as the combination of the words NAND and drive and that this would be readily apparent to any purchaser or prospective purchaser of applicant's goods. Therefore, the combination, or 'telescoping,' of the terms is immaterial to the issue before us....").

As for the marks, GREEN LIVING and LIVINGGREEN are reverse combinations of the same words or elements or a transposition of the words comprising the marks. *See e.g., Nat'l Trust & Sav. Ass'n v. Am. Nat'l Bank of St. Joseph*, 1978 TTAB LEXIS 149, at *11-12 (TTAB 1978) (BANKAMERICA and BANK OF AMERICA and AMERIBANC convey the same meaning and create substantially similar commercial impressions). Where transposed marks convey similar commercial impressions, likelihood of confusion is ordinarily found. *Carlisle Chem. Works, Inc. v. Hardman & Holden, Ltd.*, 434 F.2d 1403, 1405-06 (CCPA 1970).

Applicant argues that the marks have different connotations:

the word ‘living’ takes on a meaning that has more to do with the meaning of ‘residing,” in the domestic sense of living in one’s home. Where ‘livin’ has a lifestyle connotation, ‘living’ is much more literal in referring to what one does in their home (by definition). In other words, eco-friendly blinds suggest ‘green living’ (in one’s home) whereas said blinds would be but one aspect of a more general lifestyle that can be described as ‘livin green.’

4 TTABVUE 4.

The Examining Attorney disagrees, arguing that “both marks imply that the user of the goods is promoting a GREEN, or environmentally friendly, lifestyle.” 6 TTABVUE 5.

We find the marks substantially similar. As discussed, the telescoping of Registrant’s mark, is immaterial, and there is a reversal or transposition of the two words in the marks which are essentially the same. Except for the reversal of the words, GREEN LIVING/LIVINGGREEN are very similar in sound and appearance.

And although Applicant argues otherwise, the connotation of the marks is also very similar. Based on the information in the record, “green living” (or living green) means caring about the planet and reducing your carbon footprint by selecting sustainable eco-friendly choices in your home with products that integrate sustainable materials and save energy.⁸ In the case of Applicant’s and Registrant’s marks, GREEN LIVING/LIVINGGREEN connote products that are eco-friendly and sustainable with a reduced carbon footprint. We find that the marks, in reverse

⁸ July 9, 2024 Office Action at TSDR 24-53.

combination or transposition, have similar commercial impressions. *See e.g., In re Nationwide Indus., Inc.*, 1988 TTAB LEXIS 19, at *4 (TTAB 1988), (RUST BUSTER for rust-penetrating spray lubricant and BUST RUST, in reverse, for penetrating oil, create substantially similar commercial impressions and are confusingly similar).

The similarity of the marks weighs in favor of likelihood of confusion.

II. Conclusion

Both the similarity of the marks and the similarity of the goods weigh in favor of likelihood of confusion. We find confusion likely.

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