

This Opinion is Not a  
Precedent of the TTAB

Mailed: October 30, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board

—  
*In re I.L.L.A. S.P.A.*

—  
Serial No. 79190461

—  
Rebecca Gan of Wenderoth LLP,  
for I.L.L.A. S.P.A.

Colleen Dombrow, Trademark Examining Attorney, Law Office 101,  
Ronald R. Sussman, Managing Attorney.

—  
Before Taylor, Wolfson, and Coggins,  
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

I.L.L.A. S.P.A. (“Applicant”) seeks registration on the Principal Register of the standard character mark OLLIA-TECH for the following goods:

Non-stick coatings for pans, cookware, baking trays, small electric kitchen apparatus and utensils, in International Class 2; and

Frying pans; skillets; earthenware saucepans; saucepans; pots for cooking; household utensils, namely, graters; kitchen utensils, namely, splatter screens, in International Class 21.<sup>1</sup>

---

<sup>1</sup> Application Serial No. 79190461 was filed June 16, 2016, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141(f), requesting extension of protection based on International Registration No. 1306160 with a priority filing date of December 16, 2015.

The Trademark Examining Attorney refused registration as to the goods identified in Class 21<sup>2</sup> under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard character mark OLIA DESIGN, with DESIGN disclaimed, for “glass wares, namely, decorative, and handcraft art objects of glass; beverage glassware; mugs; cups and mugs.”<sup>3</sup>

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**

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, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). We discuss the *du Pont* factors for which Applicant and the Examining Attorney have presented evidence and arguments. “Not all of the [*du Pont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*,

---

<sup>2</sup> Although the involved application also covers goods in Class 2, the Examining Attorney “refused registration of the trademark only as to Applicant’s goods in International Class 021.” Examiner’s Brief, 11 TTABVUE 3. The refusal does not pertain to the goods in Class 2.

<sup>3</sup> Registration No. 4881407, issued January 5, 2016. The registration contains the following statement: “The wording ‘OLIA’ has no meaning in a foreign language.”

668 F.3d 1356, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010)).

### **A. Similarity or Dissimilarity of the Marks**

We first consider the *du Pont* factor of the similarity or dissimilarity of the marks and compare them, as we must, in their entirety in terms of sound, appearance, meaning and commercial impression. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). However, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of the mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). That is, “[t]he 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.” *Coach Servs. Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721 (citation omitted). See also *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem. unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*,

190 USPQ 106, 108 (TTAB 1975). Here, the average customer includes ordinary members of the general public who buy kitchen utensils, cookware, and beverage glassware.

Applicant's mark is OLLIA-TECH and Registrant's mark is OLIA DESIGN. The marks are similar in appearance in that each is comprised of two terms with the first term being either OLLIA or OLIA. These similar first terms both begin with OL- and end with -IA. The additional L positioned in the middle of Applicant's first term does little to distinguish OLLIA in appearance from the term OLIA in Registrant's mark, and may not even be noticed.

Applicant argues that the term OLLIA in its mark is likely to be pronounced as "oll-ee-ah" while the term OLIA in Registrant's mark would be pronounced as "oh-lee-ah." Main Brief, pp. 8-9 (9 TTABVUE 14-15). There is no correct pronunciation of a trademark term, like Applicant's OLLIA and Registrant's OLIA, which are not words, but coined terms. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1409 (TTAB 2010). These terms may be pronounced in an identical manner. Notwithstanding that possibility, which must be taken into account, we note that the pronunciations proposed by Applicant are themselves similar in sound. The similarity in sound between OLLIA and OLIA arises from the similarity in spelling, which also, as discussed above, contributes to the similarity in appearance. *See Eveready Battery Co. v. Green Planet Inc.*, 91 USPQ2d 1511, 1519 (TTAB 2009) (citing *Krim-Ko Corp.*

*v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”)).

Applicant has not offered any evidence to refute the statement in the cited registration that “[t]he wording ‘OLIA’ has no meaning in a foreign language,” or to show that either OLIA or OLLIA has any meaning at all. Therefore, as to connotation, in the context of the goods, on this record the terms OLIA and OLLIA appear to be arbitrary when used on kitchen goods. Thus, as least with respect to related goods, see discussion below, consumers would likely perceive the terms OLIA and OLLIA as having a similar arbitrary meaning and commercial impression.

As noted, OLLIA and OLIA are the first terms in the respective marks. These lead terms are likely to be impressed as the dominant portion of the cited marks, and consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions). *See also Palm Bay Imps.*, 73 USPQ2d at 1692 (“The presence of this strong distinctive term as the first word in both parties’ marks renders the marks similar, especially in light of the largely laudatory (and hence non-source identifying) significance of ROYALE.”). OLLIA, being the first term in the applied-for mark, is similar in appearance, sound, connotation, and commercial impression to OLIA, the first term of the cited mark.

We acknowledge the presence of TECH as the second word in Applicant's mark and DESIGN as the second word in Registrant's mark, which partially differentiate the marks. Applicant argues that the TECH portion of its mark conveys a commercial impression "of being tech-forward in the cookware space," while the DESIGN portion of Registrant's mark conveys an impression "of being related to design." Main Brief, pp. 8-8 (9 TTABVUE 14-15).

The definition of neither TECH nor DESIGN was made of record. In an effort to fully consider the commercial impression that each term may lend to its respective mark, we take judicial notice that the definitions of TECH, TECHNOLOGY, and DESIGN include multiple meanings including the following:<sup>4</sup>

- TECH
  - technology.
- TECHNOLOGY
  - the practical application of knowledge especially in a particular area.
  - a capability given by the practical application of knowledge.
  - a manner of accomplishing a task especially using technical processes, methods, or knowledge.
- DESIGN
  - an underlying scheme that governs functioning, developing, or unfolding.
  - a plan or protocol for carrying out or accomplishing something (such as a scientific experiment).
  - the arrangement of elements or details in a product or work of art.
  - the creative art of executing aesthetic or functional designs.

---

<sup>4</sup> The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010). The definitions are taken from MERRIAM-WEBSTER DICTIONARY at [www.merriam-webster.com](http://www.merriam-webster.com), accessed September 28, 2018.

From these definitions, we cannot say that TECH and DESIGN have meanings so diverse as to confer disparate commercial impressions when each immediately follows the term OLLIA or OLIA. In fact, as defined, there appears to be a relationship between TECH and DESIGN such that technology arises out of design.

We also note that DESIGN has been disclaimed in Registrant's mark. This supports our determination that OLIA would be the more dominant portion of Registrant's mark. *See In re Viterra Inc.*, 101 USPQ2d at 1908 (the court may place more weight on a dominant portion of a mark, for example if another feature of the mark is descriptive or generic standing alone; however, the ultimate conclusion nonetheless must rest on consideration of the marks in total); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (DELTA, not the disclaimed generic term CAFE, is the dominant portion of the mark THE DELTA CAFE); *In re Nat'l Data Corp.*, 224 USPQ at 751.

While we acknowledge the differences between the two marks, the differences do not outweigh the strong similarities created by the highly similar first terms OLIA and OLLIA in the marks, or the connotation and overall commercial impression engendered by the marks as a whole. Based upon the above analysis, we find that the mark OLLIA-TECH is more similar than dissimilar to the mark OLIA DESIGN in terms of appearance, sound, connotation and commercial impression. As a result, consumers encountering OLLIA-TECH could mistakenly believe that it represents a variation on the registered mark used to identify kitchen goods emanating from a

common source. This is particularly the case because, as noted earlier, the proper focus is not a side-by-side comparison of the marks, but consideration of the recollection of the average customer who retains a general rather than specific impression of the marks.

In view thereof, the first *du Pont* factor regarding the similarity of the marks favors a finding of likelihood of confusion.

**B. Similarity or Dissimilarity of the Goods, Channels of Trade, and Classes of Customers**

We next turn to the goods, channels of trade, and classes of consumers. We must make our determinations under these factors based on the goods as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). “[L]ikelihood of confusion can be found if the respective products are 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., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722 (citation and quotation marks omitted).

Applicant’s goods at issue (i.e., the Class 21 goods) are “frying pans; skillets; earthenware saucepans; saucepans; pots for cooking; household utensils, namely, graters; kitchen utensils, namely, splatter screens.” Registrant’s goods are “glass



wares, namely, decorative, and handcraft art objects of glass; beverage glassware; mugs; cups and mugs.”

The Examining Attorney made of record pages from commercial Internet websites showing that Applicant’s and Registrant’s types of goods may emanate from the same source under the same mark, and that both sets of goods travel through the same online channels of trade and are purchased by the same classes of customers, i.e., ordinary members of the general public who buy kitchen utensils, cookware, and beverage glassware. Such evidence is probative of the relatedness of the goods, and the similarity of the channels of trade and classes of customers. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). See, for example:

- Cuisinart.com: wine glasses, cheese graters, skillets, saucepans, and stockpots<sup>5</sup>;
- LeCreuset.com: wine glasses, glass tumblers, cups, mugs, frying pans, cooking pots, and splatter guard screens<sup>6</sup>;
- SurLaTable.com: wine glasses, double old fashioned glasses, mugs, graters, splatter screens, skillets, and saucepans.<sup>7</sup>
- Williams-Sonoma.com: mugs, cups, beverage glassware sets, wine glasses, champagne flutes, graters, frying pans, and saucepans.<sup>8</sup>
- ZwillingOnline.com: graters, wine glasses, saucepans, and frying pans.<sup>9</sup>
- KateSpade.com: mugs, frying pans, saucepans, cooking pots.<sup>10</sup>

---

<sup>5</sup> May 8, 2017 Final Office Action, TSDR 9-16.

<sup>6</sup> *Id.* at TSDR 17-31.

<sup>7</sup> *Id.* at TSDR 32-51

<sup>8</sup> *Id.* at TSDR 51-70.

<sup>9</sup> *Id.* at TSDR 71-74.

<sup>10</sup> *Id.* at TSDR 77-79.

- BedBathAndBeyond.com: skillets and mugs.<sup>11</sup>
- CrateAndBarrel.com: mugs and splatter screens.<sup>12</sup>

In addition, the Examining Attorney made of record at least 18 third-party registrations that include some goods from both Applicant's and Registrant's identifications.<sup>13</sup> These third-party registrations, based on use in commerce, suggest that the listed goods may emanate from the same source. *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd mem.*, 864 F.2d 149 (Fed. Cir. 1988). See, for example:

- Registration No. 5046957: cheese and cooking graters, wine and drinking glasses, and mugs.<sup>14</sup>
- Registration No. 5044340: splatter screens, cups, cheese and cooking graters.<sup>15</sup>
- Registration No. 5045515: cooking pots and cups.<sup>16</sup>
- Registration No. 4939229: cooking graters, cooking pot sets, cocktail glasses, coffee cups, mugs, drinking glasses, graters, metal cooking pans, and saucepans.<sup>17</sup>

---

<sup>11</sup> *Id.* at TSDR 84-85.

<sup>12</sup> *Id.* at TSDR 86-87.

<sup>13</sup> Even excluding the four third-party registrations that Applicant argues do not contain goods of the type identified in both Applicant's application and the cited registration (i.e., Registration Nos. 5042119, 5035209, 5035540, and 5040254), the record still contains, as Applicant acknowledges, *see* Main Brief, pp. 13-14 (9 TTABVUE 19-20), 18 use-based third-party registrations showing at least some goods identified in both Applicant's application and Registrant's registration.

<sup>14</sup> September 27, 2016 Non-Final Office Action, TSDR 11.

<sup>15</sup> *Id.* at TSDR 17.

<sup>16</sup> *Id.* at TSDR 25.

<sup>17</sup> *Id.* at TSDR 28-29.

- Registration No. 4936034: beverage glassware, pots, pans, skillets, cups, and mugs.<sup>18</sup>
- Registration No. 5012554: cups, beverage glassware, and earthenware saucepans.<sup>19</sup>
- Registration No. 5021545: earthenware saucepans, porcelain mugs, drinking vessels, and works of art of glass.<sup>20</sup>
- Registration No. 4989575: drinking cups, drinking glasses, and graters.<sup>21</sup>
- Registration No. 5050794: beverage glassware, cooking pots, cups, works of art of glass.<sup>22</sup>

This record evidence suggests that at least some of Applicant's and Registrant's goods (i.e., frying pans, skillets, saucepans, cooking pots, graters, splatter screens, beverage glassware, cups, and mugs) come from a single source under the same mark and that consumers are accustomed to seeing some of the applied-for and registered goods originating from the same source. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

Because there are no limitations as to channels of trade or classes of purchasers in Applicant's or Registrant's identifications of goods, we must presume that

---

<sup>18</sup> *Id.* at TSDR 31.

<sup>19</sup> *Id.* at TSDR 34.

<sup>20</sup> *Id.* at TSDR 36.

<sup>21</sup> May 8, 2017 Final Office Action, TSDR 91.

<sup>22</sup> *Id.* at TSDR 94.

Applicant's and Registrant's goods move, or will move, in all channels of trade usual for these goods, including online and in specialty home and kitchen supply stores, and are, or will be, purchased by the usual classes of purchasers which, in this case, include ordinary consumers. *See In re Viterra*, 101 USPQ2d at 1908; *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

Applicant's argument that the Examining Attorney's website evidence does not support similar channels of trade because two of the stores, specifically Crate & Barrel and Williams-Sonoma, are big-box retailers is misplaced. *See* Main Brief, p. 12 (9 TTABVUE 18). The evidence does not reveal that the online stores cited by the Examining Attorney are "mass retailers" or "mega-sized stores" selling all manner of goods under the same roof. Indeed, Applicant offered no evidence to support such a contention. The website excerpts reveal that the stores appear to be focused on kitchen and/or home goods, not mass retailers of goods from diverse industries. For example, the web menu bar for Williams-Sonoma.com lists the following subjects: cookware, cooks' tools, cutlery, electrics, bakeware, food, tabletop & bar, homekeeping, outdoor, and sale.<sup>23</sup> Similarly, the web menu bar for CrateAndBarrel.com lists: furniture, outdoor, dining & entertaining, kitchen, decor & pillows, rugs & curtain, lighting, bed & bath, and organization.<sup>24</sup> Even if the online stores could be considered mass retailers of goods from diverse industries, it would "not foreclose further inquiry into" likelihood of confusion. *Federated Foods, Inc. v.*

---

<sup>23</sup> *Id.* at TSDR 51.

<sup>24</sup> *Id.* at TSDR 86-87.

*Fort Howard Paper Co.*, 192 USPQ at 29 (CCPA 1976). The evidence of third-party registrations corroborates the website evidence to suggest that the listed goods emanate from the same source.

Contrary to Applicant's additional argument, *see* Reply Brief, p. 3 (12 TTABVue 7), the Examining Attorney did not argue a *per se* rule as to the relatedness of consumer goods that are stored or used in the kitchen. Instead, the Examining Attorney has demonstrated by the evidence of record that Applicant's and Registrant's specific goods are related.

At bottom, the evidence of record establishes that Applicant's goods are related to Registrant's goods and that these goods are sold, at a minimum, in overlapping channels of trade to the same consumers. As such, the second, third, and fourth *du Pont* factors weigh in favor of a finding of likelihood of confusion.

### **C. Analyzing the Factors**

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. In view of the similarity of the marks, similarity of the goods, and the overlapping channels of trade and classes of customers, we find that Applicant's mark so resembles Registrant's mark as to be likely to cause confusion, mistake, or deception as to the source of Applicant's goods.

## **II. Decision**

The Section 2(d) refusal to register Applicant's mark OLLIA-TECH for the goods in Class 21 is affirmed. The application will proceed with respect to the goods in Class 2 only.