

**This Opinion is Not a
Precedent of the TTAB**

Mailed: April 29, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Eggtronic Engineering S.P.A.
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Serial No. 79290799
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Ronni S. Jillions of Browdy and Neimark, PLLC,
for Eggtronic Engineering S.P.A.

Lyal Fox, Trademark Examining Attorney, Law Office 113,
Myriah Habeeb, Managing Attorney.

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Before Greenbaum, Coggins and Allard,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Eggtronic Engineering S.P.A. (“Applicant”) seeks registration on the Principal Register of the mark ECOVOLTAS (in standard characters) for

AC/DC power converters; Electric power converters;
Integrated circuits, in International Class 9.¹

The Trademark Examining Attorney has refused registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s

¹ Application Serial No. 79290799 was filed on February 18, 2020 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), requesting extension of protection based on International Registration No. 1543703.

mark, when used on or in connection with the identified goods, so resembles the registered mark ECOVOLT (in standard characters) for “Induction voltage regulators; Electric voltage transformers; Voltage stabilizers; Voltage regulators” in International Class 9 as to be likely to cause confusion, mistake or deception.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.³

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (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, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell*

² Registration No. 4965960 issued on May 24, 2016.

³ Citations to TTABVUE throughout the decision are to the Board’s public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVUE electronic case file and the second represents the page number(s).

Citations to the examination record refer to the USPTO’s online Trademark Status and Document Retrieval system (TSDR).

Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (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.”).

A. Similarity or Dissimilarity of the Marks

We compare the marks “in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567); *see also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citation omitted); *accord Krim-Ko Corp. v Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted). “The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a

connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018).

Because similarity is determined based on the marks in their entireties, our analysis is not predicated on dissecting the marks into their various components. *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Further, the marks “must be considered ... in light of the fallibility of memory ...” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quotation omitted). We focus on the recollection of the average consumer – here, an ordinary consumer of power management devices – who normally retains a general rather than a specific impression of trademarks. *Id.* at 1085; *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971).

We compare Applicant’s mark, ECOVOLTAS, to Registrant’s mark, ECOVOLT, and find them very similar in appearance and sound. The marks share the same structure – the prefix “eco-” followed by “volt” – and only differ by the suffix “-as” in

Applicant's mark. The "-as" suffix in Applicant's mark is insignificant in the comparison in this case, as ECOVOLTAS and ECOVOLT look and sound almost the same. *See, e.g., In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (MILTRON and MILTRONICS (stylized) highly similar in sound, appearance and commercial impression); *Sun Elec. Corp. v. Sun Oil Co. of Pa.*, 196 USPQ 450, 453 (TTAB 1977) ("close similarity" between SUNELECT and SUN ELECTRIC); *In re BASF AG*, 189 USPQ 424, 425 (TTAB 1975) (LUTEX and LUTEXAL confusingly similar).

As to the marks' connotation and commercial impression, "eco-" is a prefix defined as "relating to the environment: used with some nouns and adjectives," and "volt" is defined as "a unit for measuring the power of an electric current."⁴ In addition, the Wikipedia entry for "Volt" explains that "Volt" is "named after the Italian physicist Alessandro Volta." August 10, 2020 Office Action, TSDR 6. The marks ECOVOLT and ECOVOLTAS therefore have similar meanings, and when considered in the context of the goods identified in the application and cited registration, they create similar commercial impressions, with both marks suggesting environmentally safe power management devices. Also, consumers who are familiar with Alessandro Volta who encounter the marks ECOVOLT and ECOVOLTAS likely will associate him equally with both marks.

⁴ Macmillandictionary.com/us, accessed April 26, 2022. The Board may take judicial notice of dictionary definitions, including online dictionaries. *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); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). We do so here.

Similarity often increases when a mark incorporates the entirety of another mark. *See, e.g., Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT substantially similar to prior mark CONCEPT); *Coca-Cola Bottling Co. of Memphis, Tenn., Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (applicant's mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin). We find that to be the case here, given the very similar marks. Indeed, because of the similarities between the marks and the nature of the goods, as discussed below, consumers who encounter Applicant's mark may mistakenly believe that ECOVOLTAS is a variant of Registrant's mark ECOVOLT used for different types of power management devices. *See, e.g., Schieffelin & Co. v. Molson Cos.*, 9 USPQ2d 2069, 2073 (TTAB 1989) ("Those consumers who do recognize the differences in the [BRADOR and BRAS D'OR] marks may believe that applicant's mark is a variation of opposer's mark that opposer has adopted for use on a different product.").

Applicant argues that the cited registered mark is weak and entitled to a narrow scope of protection because the shared components of both marks, ECO and VOLT, "are merely descriptive or at least suggestive of the goods." App. Br., 6 TTABVUE 6. Therefore, argues Applicant, "the addition of 'AS' to applicant's mark," which "is likely to cause consumers to have the impression that the mark ECOVOLTAS is a Latin word (like gravitas), although the word is a made up word with no meaning in Latin or any other language ... is sufficient to overcome any likelihood of confusion." *Id.*, at 8. These arguments are unpersuasive.

Registrant's mark is registered on the Principal Register without any claim of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f). Marks that are merely descriptive of the goods or services may not be registered on the Principal Register absent a showing of acquired distinctiveness under Section 2(f). As such, Applicant's contention that ECOVOLT is merely descriptive of the identified goods constitutes an impermissible collateral attack on the cited registration. As the Board explained in *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517 (TTAB 2016), "the validity of a cited registration cannot be challenged in an ex parte proceeding." *See also In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) ("inasmuch as the cited mark is registered on the Principal Register, we must assume that it is at least suggestive and we cannot entertain applicant's argument that the registered mark is descriptive of registrant's services.").

Moreover, the record does not support a finding that ECOVOLT is less than suggestive of the power management devices identified in the cited registration, or entitled only to a narrow scope of protection. For example, there is no evidence of any third-party use or registration of ECOVOLT-formatives (or of its components) in association with similar goods that might dilute the source-identifying capacity of ECOVOLT for those goods. *Cf. Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (weakness shown by at least 26 third-party uses and registrations containing the same phrase for the same services); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (third-party

weakness evidence characterized as “voluminous”). In addition, Applicant’s contention about the perceptions of relevant consumers, i.e., the “Latin word” argument, is purely speculative and based solely on attorney argument. *See Cai*, 127 USPQ2d at 1799 (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”)).

Given their overall resemblance in appearance, sound, connotation and commercial impression, we find Applicant’s mark and Registrant’s mark very similar. The first *DuPont* factor thus weighs heavily in favor of finding a likelihood of confusion.

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

When considering the goods and their channels of trade and classes of consumers, we compare the goods as they are identified in the application and cited registration. *See Detroit Athletic Co.*, 128 USPQ2d at 1052; *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *see also Stone Lion*, 110 USPQ2d at 1161; *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

The goods identified in the application comprise “AC/DC power converters,” “electric power converters” and “integrated circuits,” and the goods identified in the registration are “induction voltage regulators,” “electric voltage transformers,” “voltage stabilizers,” and “voltage regulators.”

During prosecution, Applicant amended its identification of goods to delete goods which were identical to those identified in the cited registration. Applicant now argues that confusion is unlikely because the remaining goods are different. App. Br., 6 TTABVUE 9-10. However, the goods do not have to be identical or even competitive in order to find that they are related to support a finding of likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000). Likelihood of confusion can be found if the respective goods 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*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (citation omitted). *See also In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). The issue is whether there is a likelihood of confusion as to the source of the goods, not whether purchasers would confuse the goods. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

Here, the goods identified in the application and cited registration are related on their face in that they are power management devices. The evidentiary record, which consists of Internet evidence showing third parties offering for sale one or more of the types of goods identified in the application and registration under the same mark, many under the heading “Power Management” or “Power Management Solutions,” also supports a finding that the goods are related:

- Monolithic Power (MPS) offers voltage regulators, a “synchronous buck converter” described as “a high-efficiency, synchronous step-down converter with integrated power MOSFETs,” and under the heading “Power Management Solutions,” switching converters. March 26, 2021 Office Action, TSDR 2, 3 and 6.
- ST offers under the heading “Power Management” voltage regulators, AC-DC converters, DC-DC switching converters, and several types of integrated circuits (battery management, lighting, photovoltaic, power over ethernet, and wireless charger). *Id.*, at TSDR 8, 9 and 13.
- Maxim Integrated offers voltage regulators, voltage converters, and several types of integrated circuits (power management, motor driven and microprocess supervisory). *Id.*, at TSDR 15, 16, 20 and 21.
- NXP offers under the heading “Power Management,” AC-DC “solutions” (which include AC-DC converters), voltage regulators, and lighting driver and controller integrated circuits. *Id.*, at TSDR 24-27.
- Texas Instruments offers under the heading “Power Management,” various integrated circuits (battery-management, multi-channel, supervisor & reset) and AC-DC converters, as well as other integrated circuits, numerous voltage regulators, and DC-DC power converters. *Id.*, at TSDR 33-36, 39 and 43.

- Infineon offers AC-DC power converters, voltage regulators and various types of integrated circuits (lighting, gate driver, motor control, class D audio amplifier). *Id.*, at TSDR 50-53.
- AMS offers voltage regulators and high power buck converters. *Id.*, at TSDR 59-63.

The evidence from third-party commercial websites support a finding that the identified goods commonly emanate from the same source under the same marks, and that consumers likely will encounter such goods together in the same online stores. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009).

Turning to the channels of trade and classes of purchasers, because neither identification of goods in the application or cited registration includes any restriction regarding channels of trade, consumer or price, we must presume that the recited goods are sold in the ordinary or normal trade channels for such goods, to all consumers for such goods and without any limitation to price. *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1357 (Fed. Cir. 2000) (“When the registration does not contain limitations describing a particular channel of trade or class of customer, the goods or services are assumed to travel in all normal channels of trade.”); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983). The Internet evidence demonstrating that the goods identified in the application and cited registration are related also supports a finding that such goods move in the same channels of trade, namely, online retailers of power management devices, and reach the same classes of consumers, namely, members of the general

public interested in power management devices. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012); *Davey*, 92 USPQ2d at 1203-1204.

Applicant points to Applicant's and Registrant's websites as evidence of "the real-world marketplace," arguing that the goods are not related because Applicant's goods are "tiny objects" that "are used as parts and components of other products" relating to "consumer personal electronic devices," and Registrant's goods are "industrial-grade options for protecting equipment and processes against unavoidable voltage anomalies"—they are "finished and completed products used for a different purposes, which is to protect industries from damaging electrical events." App. Br., 6 TTABVue 10-11. Applicant also briefly argues that the channels of trade and prices of the identified goods differ. *Id.*, at 11. These arguments are unconvincing.

We remind Applicant that our determination under these *DuPont* factors is based on the description of goods in the application and cited registration, not on extrinsic evidence of actual use. *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749-1750 (Fed. Cir. 2017). In other words, an applicant may not restrict the scope of the goods covered in its application or the cited registration by argument or extrinsic evidence. *Stone Lion*, 110 USPQ2d at 1162 ("It was proper, however, for the Board to focus on the application and registrations rather than on real-world conditions"); *Octocom*, 16 USPQ2d at 1787 ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to

the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”).

These *DuPont* factors weigh in favor of finding likelihood of confusion.

C. Conditions Under Which and Buyers to Whom Sales Are Made

Under the fourth *DuPont* factor, we consider the “conditions under which and buyers to whom sales are made, i.e., impulse vs. careful, sophisticated purchasing,” *DuPont*, 177 USPQ at 567. Applicant briefly argues that while its goods are sold to unsophisticated consumers, Registrant's customers are sophisticated because its goods are “expensive” “industrial grade products” that are sold to a “professional person, who is well prepared and able to understand the differences between the goods, their use and the different know how and technology necessary for their production,” and who would not make such purchases “on a whim.” App. Br., 6 TTABVUE 12-13. However, there is nothing in the nature of the products identified in the cited registration, without any limitation as to their types, price points or intended consumers, to suggest their purchasers are particularly careful or sophisticated or limited to professionals. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1739 (TTAB 2018). In fact, the standard of care is that of the least sophisticated potential purchaser. *Stone Lion*, 110 USPQ2d at 1163.

Even assuming that Registrant's goods may involve a careful purchase, it is settled that even sophisticated purchasers are not immune from source confusion, especially in cases such as this one involving very similar marks and similar goods. *See In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986),

citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) (“Human memories even of discriminating purchasers ... are not infallible.”).

In view thereof, we find this *DuPont* factor to be neutral.

II. Conclusion

Having considered all evidence and arguments bearing on the relevant *DuPont* factors, we find Applicant’s mark and Registrant’s mark very similar, and the identified goods are related, move in overlapping channels of trade and reach the same classes of consumers. Regardless of any possible care in purchasing some of the goods, the other *DuPont* factors establish that confusion is likely.

Decision: The refusal to register Applicant’s mark ECOVOLTAS is affirmed.