

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

Mailed: May 1, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Bear Creek Distillery, LLLP
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Serial Nos. 87026602 and 87026770
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Syed Abedi of Seed IP Law Group PLLC,
for Bear Creek Distillery, LLLP.

Eliana Torres, Trademark Examining Attorney, Law Office 110,
Chris A.F. Pedersen, Managing Attorney.

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Before Cataldo, Greenbaum and Pologeorgis,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Bear Creek Distillery, LLLP (“Applicant”) has filed two applications on the Principal Register, one for BEAR CREEK DISTILLERY (in standard characters), and



one for BEAR CREEK DISTILLERY and design , both for

Spirits; Spirits and liqueurs; Distilled spirits, in
International Class 33.¹

¹ Application Serial Nos. 87026602 and 87026770, respectively, were filed on May 15, 2016, based upon Applicant’s claim of first use anywhere and use in commerce since at least as

The Trademark Examining Attorney has refused registration of both marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's marks so resemble the mark BEAR CREEK in typed form for "wines" in International Class 33 that, when used on Applicant's goods, they are likely to cause confusion or mistake or to deceive.²

When the refusal was made final in each application, Applicant appealed and requested reconsideration. After the Examining Attorney denied the requests for reconsideration, the appeals were resumed. After Applicant submitted its appeal briefs, the Board granted the Examining Attorney's motion to consolidate the appeals.³ We therefore decide both appeals in a single opinion. We affirm the refusal to register in each application.

I. Applicable Law

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 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key

early as November 20, 2014. DISTILLERY is disclaimed in both applications. In addition, Application Serial No. 87026770 includes the following description of the mark: "The mark consists of a bear on jagged terrain above the words BEAR CREEK, which is above the italicized word Distillery having bullet points on each end of the word." Color is not claimed as a feature of the mark.

² Registration No. 2881924, registered September 7, 2004; renewed. Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. TMEP § 807.03(i) (October 2017).

³ Citations to the TSDR database are in the downloadable .pdf format and to the file for Application Serial No. 87026602. The evidentiary records in the involved applications are essentially identical.

considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int'l Inc.*, 380 F.2d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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.”). We discuss below these and other relevant factors. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (even within *du Pont* list, only factors that are “relevant and of record” need be considered). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Number and Nature of Similar Marks in Use on Similar Goods

Because the strength of the cited mark under the sixth *du Pont* factor impacts our comparison of the marks, we first address Applicant’s claim under this factor that the cited registration deserves a narrow scope of protection in view of “widespread” third party uses of marks that consist of or include the term BEAR CREEK in connection with wines.⁴ The Federal Circuit has held that evidence of extensive registration and

⁴ Applicant’s Brief, 11 TTABVUE 13.

use of a term by others for related goods or services can be powerful evidence of the term's weakness. *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), *cert. denied*, 136 S. Ct. 982 (Jan. 25, 2016); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015).

Applicant relies exclusively on screenshots from the following third party commercial websites displaying the term BEAR CREEK in connection with wines and wine-related services to show commercial weakness:

1. Bear Creek Winery & Lodging, located near the Bear Creek Canyon in Homer, Alaska;⁵
2. Bear Creek Wine Company in Branson, Missouri, which “features 8 different Missouri Grape wines”;⁶
3. Bear Creek Wine Trail, a website for “Oregon’s Southernmost Wine Trail,” “[n]estled in the hills along the back roads of the Bear Creek Valley”;⁷ and
4. Bear Creek Winery, featuring “North Dakota prairie wines from the Red River Valley”.⁸

From the standpoint of commercial weakness, “[t]he probative value of third-party trademarks depends entirely upon their usage.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693

⁵ November 23, 2016 Response to Office Action, TSDR p. 179.

⁶ *Id.*, TSDR pp. 180-184.

⁷ *Id.*, TSDR pp. 185-188.

⁸ June 16, 2017 Request for Reconsideration, TSDR p. 37.

(Fed. Cir. 2005). In this case, only the “Bear Creek Wine Company” shows the wording BEAR CREEK used on or in connection with wines.⁹ The other three show the wording BEAR CREEK in connection with wine-related services, but not on or in association with the wines themselves, thus limiting the probative value of this evidence. In any event, based on this relatively small number of third-party uses, we cannot infer a degree of consumer exposure that would support a finding that consumers distinguish among marks containing “Bear Creek” based on minor distinctions. *Cf. Jack Wolfskin*, 116 USPQ2d at 1136 (“ubiquitous use”); *Juice Generation*, 115 USPQ2d at 1674 (“considerable number”). We therefore find the sixth *du Pont* factor neutral.

B. The similarity or dissimilarity of the marks

We next compare Applicant’s standard character mark BEAR CREEK DISTILLERY and Applicant’s composite word and design mark to Registrant’s typed mark BEAR CREEK “in their entirety as to appearance, sound, connotation and commercial impression.” *In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *du Pont*, 177 USPQ at 567). *See also Palm Bay Imps.*, 73 USPQ2d at 1691. “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.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101

⁹ The screenshot shows the wording BEAR CREEK as part of a composite word and design mark on labels affixed to wine bottles.

USPQ2d 1713, 1721 (Fed. Cir. 2012) (quotation omitted). Further, 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) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). The proper focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Binion*, 93 USPQ2d 1531 (TTAB 2009); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). “[S]imilarity is not a binary factor but is a matter of degree.” *St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059 (Fed. Cir. 2003)).


Applicant argues that the differences in the marks in sound and appearance are sufficient to distinguish them, and Applicant’s marks have different connotations from Registrant’s mark because DISTLLERY indicates that unlike Applicant’s wines, Registrant’s products are distilled. The Examining Attorney focuses on the visual, aural, and connotative similarities between the identical wording BEAR CREEK, which she contends is the most distinctive portion, and therefore the strongest source identifying element, of Applicant’s marks. We agree with the Examining Attorney’s assessment of the similarity of the marks.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ

749, 751 (Fed. Cir. 1985); *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 a consideration of the marks in their entireties. *Nat’l Data*, 224 USPQ at 751.

When considered in their entireties, we find Applicant’s marks BEAR CREEK



DISTILLERY and  to be very similar to Registrant’s mark BEAR CREEK. Applicant’s marks contain Registrant’s mark, to which Applicant has added the word DISTILLERY and, in Application Serial No. 86026770, a design element. Although there is no absolute rule that a likelihood of confusion is present where an applicant’s mark contains the whole of the registered mark and additional matter, the fact that Applicant’s marks include the entirety of the cited registered mark increases the similarity between them. *See, e.g., Coca-Cola Bottling Co. of Memphis, Tenn., Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (applicant’s mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin).

There is no evidence that BEAR CREEK has any significance as applied to any of the goods identified in the applications or registration.¹⁰ On the other hand, “distillery” is highly descriptive, if not generic, of a place where Applicant’s identified goods are produced, and appropriately has been disclaimed. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997). Descriptive matter typically is less significant or less dominant when comparing marks. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (quoting *Nat’l Data Corp.*, 224 USPQ at 752 (the “descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion”)). We find that to be the case here, where consumers likely will view the term DISTILLERY in Applicant’s marks in its descriptive sense, rather than as a source-distinguishing element as Applicant’s posits.

The prominence of the term BEAR CREEK is further enhanced by its placement as the initial literal element of Applicant’s marks. *See Palm Bay Imps.*, 73 USPQ2d at 1692; *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed in the mind of a purchaser and remembered”). *See also Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word).

As for the composite word and design mark, for the reasons discussed above, BEAR CREEK is the dominant element in the word portion of the mark. Although

¹⁰ We discussed above Applicant’s evidence of third-party uses of BEAR CREEK.

this mark also includes a design element of a bear on jagged terrain, it is the word portion that is dominant because consumers will use the words, rather than the design, to refer to and call for the goods. *See Viterra*, 101 USPQ2d at 1908; *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987) (if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services). *See also CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) (“in a composite mark comprising a design and words, the verbal position of the mark is the one most likely to indicate the origin of the goods to which it is affixed.”). Moreover, the bear design reinforces and enhances the literal term “BEAR” in Applicant’s composite word and design mark, and therefore does not significantly distinguish this mark from Registrant’s mark.

Finally, Applicant’s standard character mark and Registrant’s typed mark are not limited to any particular depiction. The rights associated with a standard character mark reside in the wording and not in any particular display. *In re RSI Sys., LLC*, 88 USPQ2d 1445, 1448 (TTAB 2008); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); TMEP § 1207.01(c)(iii) (October 2017). We must consider Applicant’s and Registrant’s standard character marks “regardless of font style, size, or color,” *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1258-59 (Fed. Cir. 2011), including iterations minimizing the (at least) highly descriptive word DISTILLERY in Applicant’s mark.

Accordingly, we find that BEAR CREEK is the most dominant and distinctive element in Applicant's marks BEAR CREEK DISTILLERY and BEAR CREEK DISTILLERY and design. BEAR CREEK thus is entitled to more weight in our analysis of these marks. In coming to this conclusion, we do not ignore the presence of the additional wording and/or design in Applicant's marks. However, for the reasons discussed above, we find that consumers are more likely to remember the term BEAR CREEK than the other elements of Applicant's marks. *Nat'l Data*, 224 USPQ at 751.

While there are some specific differences between Applicant's and Registrant's marks, we find that in their entireties, Applicant's marks BEAR CREEK



DISTILLERY and _____, and Registrant's mark BEAR CREEK are very similar in appearance, sound, and connotation due to the shared term BEAR CREEK, and that they convey similar commercial impressions. The factor of the similarity of the marks thus favors a finding of likelihood of confusion.

C. Goods and Channels of Trade

With regard to the goods and channels of trade, we must make our determinations under these factors based on the goods as they are identified in the application and registration. *Dixie Rests.*, 41 USPQ2d at 1534. *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir.

2002); *Octocom Sys., Inc. v. Houston Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

1. Similarity of Goods

The second *du Pont* factor “considers whether the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the goods and services.” *St. Helena Hosp.*, 113 USPQ2d at 1086 (quoting *Hewlett-Packard*, 62 USPQ2d at 1004). When analyzing the relatedness of the goods, “it is not necessary that the products of the parties be similar or even competitive to support a finding of likelihood of confusion.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000) (The products need not be identical or even competitive to find a likelihood of confusion). Rather, “likelihood 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.*, 101 USPQ2d at 1722 (quoting *7-Eleven*, 83 USPQ2d at 1724). 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). We also keep in mind that the greater the similarity between an applicant’s mark and the cited registered mark, the less the degree of similarity between the applicant’s goods and the registrant’s goods that is required

to support a finding of likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001) (cited with approval in *Coors Brewing*, 68 USPQ2d at 1062).

Applicant's identified goods are "spirits, spirits and liqueurs, and distilled spirits." Registrant's identified goods are "wines." The Examining Attorney has submitted a substantial amount of evidence to show the relatedness of spirits and wines. First, the Examining Attorney has made of record nearly 100 use-based, third-party registrations showing that a single mark has been adopted for the products identified in both the applications and registration.¹¹ *See, for example*, Registration Nos. 4713259 (SIXTO), 4682623 (BUTTONS), 4646106 (MARGARITAS WITH A MISSION), 4497670 (MONDANO), 4744365 (ZBIGNIEW), 4642346 (ORIENT STANDARD), 5091624 (UNKISSED FROG), and 5037342 (GOLDEN GRIZZLY), all for, *inter alia*, spirits and wines.¹² While third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, such registrations which individually cover a number of different items and which are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods are of a type which may emanate from a single source. *See In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988), and cases cited therein; *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

¹¹ August 22, 2016 Office Action, TSDR pp. 9-168, and December 18, 2016 Final Office Action, TSDR pp. 6-28.

¹² The first six registrations are attached to the August 22, 2016 Office Action. The latter two registrations are attached to the December 18, 2016 Final Office Action.

In response to the numerous third-party registrations, Applicant contends that “website evidence from the owners of nine of the registrations reveal that the registered marks are used either on wines or spirits, but not both.”¹³ However, a trademark registration on the Principal Register is *prima facie* evidence of the validity of the registration and the registrant’s exclusive right to use the mark in commerce in connection with the specified goods. 15 U.S.C. § 1057(b). Consequently, Applicant’s contentions constitute an impermissible collateral attack on the validity of the third-party registrations, and may not be considered in an ex parte proceeding. *See Dixie Rests.*, 41 USPQ2d at 1534-35.

In any event, the case law makes clear that third-party registrations are not evidence that the marks shown therein are in commercial use, and therefore whether or not the registrants are currently using their marks for each of their identified goods is not the basis for considering the registrations as evidence of the relatedness of the goods. Moreover, the third-party registrations are not the only evidence made of record by the Examining Attorney to show that wine and spirits are related.

The Examining Attorney has provided substantial evidence of webpages from third parties that operate both wineries and distilleries, and many of them make this clear by including both the words “winery” and “distillery” in their trademarks/trade names.¹⁴ Examples of the latter include:

- Cedar Ridge Winery and Distillery of Iowa;

¹³ Applicant’s Brief, 11 TTABVUE 16.

¹⁴ September 5, 2017 Denial of Request for Reconsideration, TSDR pp. 4-70.

- Don Quixote Distillery & Winery of New Mexico;
- Flag Hill Distillery & Winery of New Hampshire;
- Koenig Distillery & Winery, of Idaho; and
- Sweetgrass Winery & Distillery of Maine.

In addition:

- Boyden Valley Winery, in Cambridge, Vermont produces and offers daily tastings of award-winning wine and spirits;
- Grand River Brewery in Jackson, Michigan is a brewery, eatery, winery and distillery;
- Huber's Orchard, Winery & Vineyards in Starlight, Indiana operates a winery and distillery;
- McMenamins, a "neighborhood gathering spot throughout Oregon and Washington ... handcrafts [its] own beer, wine, cider, spirits and coffee";
- Mountain View Vineyard in Stroudsburg, Pennsylvania produces wine and spirits;
- Nashoba Valley Winery in Bolton, Massachusetts "boasts a state-of-the art wine-making and distillation facility" that makes "over 30 varieties of wines" and a variety of distilled spirits;
- Ransom Wines & Spirits "is an artisan producer of small batch wines and spirits from Oregon grapes"; and

- Woodstone Creek in Cincinnati, Ohio advertises itself as “a true artisan winery and boutique distillery [that] produces 100-200 cases of wine, mead and distilled spirit yearly.”

In response to the Examining Attorney’s marketplace evidence, Applicant contends that Woodstone Creek is the only example of a combination winery/distillery that produces wines and spirits under the same label, and that this evidence, or lack thereof, supports Applicant’s position that wine and spirits do not emanate from a single source under a single mark. In further support of this position, Applicant points to its own Internet evidence of 79 wineries that do not produce spirits. However, the question is not whether consumers would expect to order spirits at a winery or wine at a distillery, but whether wine and spirits are so related that purchasers would expect these goods to emanate from the same source if they were sold under the same or confusingly similar marks. In that respect, the issue is not the number of combination wineries/distilleries that produce wines and spirits under one label, but whether consumers would be familiar with the fact that there are combination wineries and distilleries, or companies that produce both types of goods, such that they would assume a connection between the two products. *Cf. In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009), in which the Board stated, in connection with a similar argument regarding third-party registration evidence:

There is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product. Therefore, evidence showing only that the source of one product may not be the source of another product does not aid applicant in its attempt to rebut the evidence of the examining attorney.

Here, the Internet evidence shows that there are a number of combination wineries and distilleries, and/or companies that produce and offer for sale both wine and spirits, and consumers across the country, including in Idaho, Iowa, Massachusetts, Maine, Oregon, and Pennsylvania, have been exposed to the concept that wineries, distilleries, and combination wineries/distilleries sell both wine and spirits. The third-party registration evidence and the marketplace together amply demonstrate that wine and spirits are related, and show that consumers who encounter both wine and spirits sold under confusingly similar marks likely would believe that they emanate from a common source.

2. Channels of Trade

With regard to the channels of trade and class of purchasers, because there are no limitations as to channels of trade or classes of purchasers in either the applications or registration and the identified goods are closely related, we must presume that the goods identified in the applications and registration travel through all normal and usual trade channels for such goods, and that they are sold to all classes of prospective purchasers for those goods. *Stone Lion*, 110 USPQ2d at 1161. *See also Coach Servs.*, 101 USPQ2d at 1723 (absent limitation “goods are presumed to travel in all normal channels ... for the relevant goods.”). The ordinary channels of trade for wines and spirits include wineries and combination wineries/distilleries, as the marketplace evidence discussed above reflects. It also is common knowledge that these goods can be purchased in liquor stores.

We do not find persuasive Applicant’s arguments regarding its actual channels of trade and Applicant’s attempts to limit Registrant’s channels of trade. As we stated

above, we must assess this *du Pont* factor according to the identifications of the respective goods in the applications and registration at issue, neither of which is so limited, not on extrinsic evidence of actual use. *See, e.g., Coach Servs.*, 101 USPQ2d at 1722; *Octocom*, 16 USPQ2d at 1787; *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1638 (TTAB 2009) (“We have no authority to read any restrictions or limitations into the registrant’s description of goods.”). Thus, Applicant’s arguments seeking to impose limitations on the goods identified in the cited registration are unavailing, as is Applicant’s offer in its Request for Reconsideration to limit its channels of trade to “clarify that they are offered to retail consumers.”


Applicant’s reliance on *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1153 (TTAB 1990) is misplaced. *Trackmobile* stands for the proposition that when the nature of the goods is unclear (e.g., mobile railcar movers v. light railway motor tractors), extrinsic evidence may be used to demonstrate what a specific term means in an industry to understand whether or not one is encompassed by the other, because “it is improper to simply consider that description in a vacuum.” *Id.* at 1154. We do not consider “wines” as used in the identification of the cited registration to be unclear. The absence of trade channel limitations does not present a “vacuum”; it simply provides for broader protection.

In view of the foregoing, we find that the goods identified in the applications and registration are closely related products that are sold through the same channels of trade to the same class of purchasers. These factors weigh in favor of likely confusion.

II. Conclusion

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, as they pertain to the relevant *du Pont* factors. To the extent that any other *du Pont* factors for which no evidence is of record may nonetheless be applicable, we treat them as neutral. We conclude that Applicant's



marks BEAR CREEK DISTILLERY and  are highly similar to the cited mark BEAR CREEK, and that the goods identified in the applications and registrations are related and move through the same channels of trade. We find that Applicant's marks are likely to cause confusion with the cited mark when used on or in connection with the goods identified in the applications.

Decision: The refusal to register each of Applicant's marks based on Section 2(d) of the Trademark Act is affirmed.