

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re California Faucets, Inc.
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Serial No. 87029512
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Irene Y. Lee of Russ August & Kabat,
for California Faucets, Inc.

Louis Kolodner, Trademark Examining Attorney, Law Office 122,
John Lincoski, Managing Attorney.

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Before Bergsman, Shaw, and Masiello,
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

California Faucets, Inc. (“Applicant”) seeks registration on the Principal Register of the mark GAVIOTA, in standard characters, for “Luxury bathroom faucets; Water control valves for bathroom faucets; Plumbing fittings, namely, spouts for bathroom fixtures; Tub Spouts; Shower Heads; Handles for shower faucets; Plumbing fittings, namely, [and] shower control valves,” in International Class 11.¹

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¹ Application Serial No. 87029512, filed on May 9, 2016 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1(b), based on a bona fide intent to use the mark.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when applied to the identified goods, so resembles the mark SEAGULL, in typed form, for goods identified as "water purification units and parts thereof," in International Class 11,² as to be likely to cause confusion, mistake or deception. In addition, the Examining Attorney refused registration of Applicant's mark under Trademark Rule 2.32(a)(9), 37 C.F.R. § 2.32(a)(9), based on Applicant's failure to comply with the requirement to provide an English translation for GAVIOTA, which, the Examining Attorney contended, is the Spanish word for "seagull."

When the refusals were made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, and the appeal resumed. Applicant and the Examining Attorney filed briefs.

We affirm the refusals to register.

I. Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between

² Registration No. 2552790, issued March 26, 2002; combined Sections 8 and 15 affidavit accepted and acknowledged; renewed. Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed mark is the legal equivalent of a standard character mark. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012). *See also* Trademark Manual of Examining Procedure (TMEP) § 807.03(i) (Oct. 2017).

the goods and the similarities between the marks. *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. The nature and similarity or dissimilarity of the goods, the established, likely-to-continue trade channels and classes of purchasers.

We start our analysis with the second and third *du Pont* factors and look at the relationship between the goods at issue, the channels of trade in which they travel and the classes of consumers. In comparing the goods, it is not necessary that they be identical or even competitive in nature in order to support a finding of likelihood of confusion. The goods 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. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). The issue of likelihood of confusion must be determined on the basis of the goods as set forth in the application and the cited registration. *Octocom Sys. Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant’s goods comprise various bathroom fixtures, namely faucets, water control valves, spouts, shower heads, and handles for shower faucets. Registrant’s goods are “water purification units and parts thereof.”

The Examining Attorney argues that Applicant’s and Registrant’s goods are related because they are both “a kind that may emanate from a single source under

a single mark”³ In support, the Examining Attorney introduced printouts from third-party websites showing goods similar in type to those of Applicant and Registrant offered by the same party under a single mark, *e.g.*, moen.com and rohlhome.com.⁴ The Examining Attorney also made of record eight third-party registrations to demonstrate that the respective goods are offered under the same mark. Third-party registrations that are based on use in commerce and that individually cover various different goods may have some probative value to suggest that the listed goods are of a type that may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786 (TTAB 1993). The following examples are the most relevant:⁵

- Registration No. 1747006 for the mark “OPELLA” identifying, inter alia, “faucets, valves, handles . . . shower heads” and “water filtration units;”
- Registration No. 4837703 for the mark “OPTIMH20” identifying, inter alia, “bath and shower faucets” and “water filtration units;”
- Registration No. 5044439 for the mark “RACBOX” identifying, inter alia, “Water faucet spout . . . Tap water faucets” and “Water filtration apparatus for the deionization of water . . . Water purification and filtration apparatus; Water treatment equipment, namely, cartridge filtration units; Water treatment equipment, namely, reverse osmosis filtration units; Water treatment equipment, namely, water filtration units;”
- Registration No. 5117932 for the mark “PUREH7” identifying, inter alia, “Faucet sprayers; Faucets; Water conservation plumbing fixtures, namely, faucets, aerators . . . showerheads . . . Shower faucet extensions” and “Water

³ Examining Attorney’s Br., p. 11, 14 TTABVUE 11.

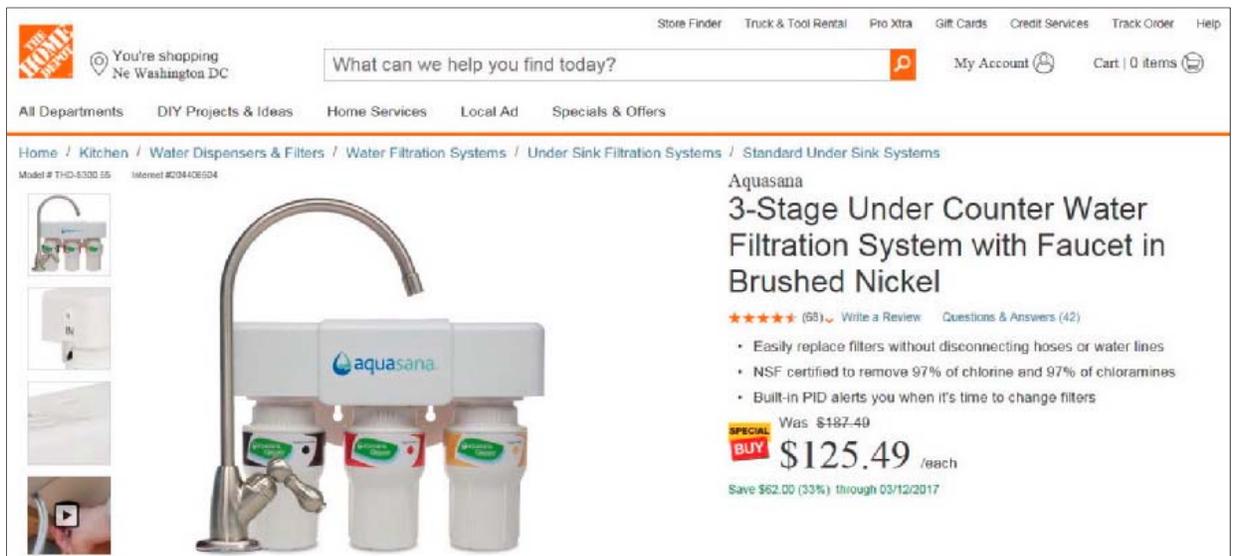
⁴ Office Action of August 31, 2016, pp. 2-10.

⁵ Office Action of March 13, 2017, pp. 51-73.

Filters; Water filtration and purification units and replacement cartridges and filters therefor;” and

- Registration No. 5112894 for the mark “L’ACOQUA” identifying, inter alia, “Faucet sprayers; Faucets; Water conservation plumbing fixtures, namely, faucets, aerators . . . showerheads . . . Shower faucet extensions” and “Water Filters; Water filtration and purification units and replacement cartridges and filters therefor.”

The Examining Attorney also argues that water purification units, including Registrant’s, commonly include faucets and shower heads. In support, he introduced a number of internet website excerpts showing water purification units which include faucets or shower heads. The following examples are representative:



⁶ Homedepot.com, Office Action of March 13, 2017, p. 3.

Home Depot logo: You're shopping in Washington DC

Search bar: What can we help you find today?

Navigation: All Departments | DIY Projects & Ideas | Home Services | Local Ad | Specials & Offers

Breadcrumbs: Home / Kitchen / Water Dispensers & Filters / Water Filtration Systems / Under Sink Filtration Systems / Reverse Osmosis Systems

Model # QURM10FRL | In-stock #232073553 | Store SKU #416660

GE Reverse Osmosis Filtration System

★★★★☆ (290) Write a Review Questions & Answers (142)

- Reduces up to 99% of the contaminants in your drinking water
- Filter change indicator signals you to change the filter
- Compatible with filter FX12P

\$179.00 /each

<p>30% OFF</p> <p>Wheelton Kitchen Water Filter Faucet(F-102-3E) Remove...</p> <p>US \$30.24 / piece</p> <p>US \$43.20 / piece</p> <p>Orders(46)</p>	<p>30% OFF</p> <p>Remove water contaminants alkaline water ionizer ...</p> <p>US \$17.92 / piece</p> <p>US \$26.00 / piece</p> <p>Orders(450)</p>	<p>15% OFF</p> <p>Water Filter Sediment polypropylene filter 10" 1 Micron...</p> <p>US \$4.75 / piece</p> <p>US \$5.60 / piece</p> <p>Min. Order : 4 pieces</p> <p>Orders(3)</p>	<p>8% OFF</p> <p>Brand new High Quality Filter cartridges for Water...</p> <p>US \$6.83 / piece</p> <p>US \$9.60 / piece</p> <p>Min. Order : 2 pieces</p> <p>Orders(17)</p>
<p>8% OFF</p> <p>2016 Brand new High Quality Filter cartridges for ...</p> <p>US \$7.51 / piece</p> <p>US \$9.17 / piece</p> <p>Min. Order : 3 pieces</p>	<p>10% OFF</p> <p>Wheelton Bath Shower Filter (H-303-3E) Softener...</p> <p>US \$25.38 / piece</p> <p>US \$28.20 / piece</p> <p>Orders(36)</p>	<p>8% OFF</p> <p>Spes/lot Healthy household kitchen faucet water purifier...</p> <p>US \$22.72 / piece</p> <p>US \$24.70 / piece</p> <p>Orders(33)</p>	<p>45% OFF</p> <p>Brand New Shower Filter Household kitchen bathroom...</p> <p>US \$6.25 / piece</p> <p>US \$11.36 / piece</p> <p>Orders(175)</p>

⁷ Id. at 34.

⁸ Wheelton.aliexpress.com, Office Action of September 29, 2017, p. 96.

The screenshot shows the Aqua Pure Filters website interface. At the top, there is a navigation bar with the Aqua Pure Filters logo, a 'FREE SHIPPING' banner for orders over \$100, and links for 'My Account' and 'Basket'. Below the navigation bar is a search bar with the text 'Search product' and 'Filter Finder'. A blue banner with water splashes is positioned below the search bar. The main content area displays search results for 'shower', showing 'Results 1 - 8 of 8'. Five product listings are visible, each with an image, title, price, and an 'Add to Basket' button. The products are: 56148-21 Pol. Chrome Shower Filter (price \$0.00), HH Shower Filter-Chrome (price \$74.97), 56148-27 Wh H.O. Shower Filter (price \$0.00), 56148-41 RC Filter Cartridge (price \$26.20), and APHF-RC Replacement Cartridge (price \$26.35). The website footer contains a small number '9'.

Registrant’s website, introduced by Applicant, states that Registrant’s water purification units can be used with “baths” and “showers:”

In-Home: Eco-friendly, the award winning, point-of-use, Seagull IV drinking water systems provide great tasting water for cooking, drinking and ice-makers without the hassle, wait, waste, or worry of bottled water. . . . Several models and sizes are available to suit even the most challenging kitchens, baths and bar areas. California certified models available for California residents. Add a Spark-L-Pure large capacity filtration system for chlorine-free showers and whole-house capacity.¹⁰

⁹ Aquapurefilters.com, Office Action of September 29, 2017, p. 99.

¹⁰ Generalecology.com, Applicant’s Request for Reconsideration of September 13, 2017, p. 91.

Registrant's website shows that Registrant offers faucets as part of its water purification units:

The screenshot shows the General Ecology, Inc. website. The header includes the company logo and tagline "The World Leader in Drinking Water Purification". Navigation links for "Products", "How to Choose", "Contact Us", and "Customer Care" are present. Below the navigation, there are tabs for "In Home", "Portable", "Marine/RV", and "Aircraft". The "In Home" tab is selected, leading to a "Featured Purifier" section. This section features a product image of the "Seagull IV X-1F Purifier with Faucet" and a list of bullet points: "Best Selling System. Tried and Trusted for over 35 years.", "Chemical Free Water Purification for great tasting water.", "Quick and easy installation.", and "Stainless Steel Housing with replaceable cartridge. Includes faucet." The price is listed as "\$641.48" and there is a link for ">> more information" and an "Add to Cart" button. To the right of the product description is a circular seal stating "Independently certified to EPA Guide Standard Protocol for Microbiological Purifiers against Bacteria, Cysts and Viruses!". Below this seal is a box for "California Residents" with a map of California and a link: "Please click here for state-specific models of these products".

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Applicant argues that the goods are not related because they serve different purposes and are used in different parts of the house:

Applicant has made of record that the products sold under the GAVIOTA mark are for bathroom fixtures only, which obviously have no need for or connection with water purification units. Applicant even narrowed the identification of goods listed in the Subject Application to be solely relating to bathroom fittings, which have no relationship whatsoever to the water purification units sold under the Cited Mark for pure drinking water in a kitchen.¹²

¹¹ *Id.* at 113.

¹² Applicant's Br., p. 4, 12 TTABVUE 5.

This argument is unpersuasive. Although Applicant has limited its goods to “bathroom” fixtures, Registrant’s goods are not limited to producing “drinking water in a kitchen,” as Applicant alleges. Therefore, Registrant’s goods may be used in any part of the home including bathrooms. Indeed, as discussed supra, Registrant’s website specifically states that its goods may be used in connection with “baths” and “showers.”¹³ Moreover, goods need not be designed to be used *together* in order to be perceived by customers as related in the sense that they may emanate from the same source.

The foregoing evidence establishes that the respective goods may emanate from the same source under the same mark, and further, that faucets and shower heads are sometimes sold as parts of water purification units. Accordingly, we find Applicant’s plumbing fixtures, particularly faucets and shower heads, are related to Registrant’s “water purification units and parts thereof.” 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).

Regarding, trade channels and classes of purchasers, there is little evidence in the record as to these factors. Applicant argues that its goods are “luxury, decorative faucets and drains, sold at a high price point”¹⁴ and that the channels of trade “are

¹³ *Generalecology.com*, Applicant’s Request for Reconsideration of September 13, 2017, p. 91.

¹⁴ Applicant’s Br., p. 3, 12 TTABVUE 4.

highly restricted so as to minimize even the slightest risk of confusion.”¹⁵ Neither the application nor the registration contains any restrictions as to the prices of the goods; accordingly, we must interpret the goods of both Applicant and Registrant as including goods at all normal prices for such goods, both high and low. *Octocom*, 16 USPQ2d at 1787. But both Applicant’s and Registrant’s goods are sold online and at similar price points¹⁶ which suggests that the channels of trade and classes of purchasers are similar as well. The *du Pont* factors relating to the similarity of the goods, the channels of trade and classes of purchasers favor a finding of likelihood of confusion.

B. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

Next, we consider the similarity of the marks. In comparing the marks we must consider their appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The emphasis of our analysis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. Although we consider the marks as a whole, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been

¹⁵ *Id.* at 4, 12 TTABVue 5.

¹⁶ See Applicant’s Request for Reconsideration of September 13, 2017, Silverstein Dec., Exh. H, pp. 94-111, and Exh. I, pp. 112-115.

given to a particular feature of a mark.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

To determine similarity of meaning and connotation, in order to ascertain confusing similarity with English word marks, foreign words from common modern languages generally are translated into English under the doctrine of foreign equivalents. *Palm Bay*, 73 USPQ2d at 1696; *McCarthy on Trademarks and Unfair Competition*, § 23:36 (5th ed. June 2018). The doctrine of foreign equivalents is not an absolute rule, however, and should be viewed merely as a guideline. *Id.* “The doctrine should be applied only when it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’” *Id.* (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)). The “ordinary American purchaser” includes “all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009).

Registrant’s mark is SEAGULL. Applicant’s mark is GAVIOTA which, as the Examining Attorney has demonstrated, means “seagull” in Spanish.¹⁷ GAVIOTA has no definition in English.¹⁸ The record shows that an appreciable number of American consumers speak Spanish. The 2011 Census Department report submitted by the Examining Attorney titled *Language Use in the United States: 2011* shows that

¹⁷ See, e.g., *The American Heritage Spanish Dictionary*, Office Action of September 29, 2017, pp. 57-59; *Cassell’s Spanish – English Dictionary*, *Id.* at 60-62; and *Collins Spanish Dictionary*, *Id.* at 63-65.

¹⁸ Office Action of September 29, 2017, pp. 2-14.

Spanish is the most common foreign language spoken in the United States.¹⁹ According to the Census report, approximately 37,579,787 people in the United States speak Spanish.²⁰

Citing TMEP section 1207.01, Applicant argues that the doctrine of foreign equivalents does not apply “where the foreign wording has developed an alternate meaning in the relevant marketplace that is different from the translated meaning in English, and the evidence shows that the alternate meaning would be understood by the relevant purchasing public.”²¹ According to Applicant, “the word ‘GAVIOTA’ predominantly refers to the southern California beach town Gaviota, California and the famous Gaviota State Park, as well as other tourist attractions in the Gaviota area.”²²

Applicant’s evidence regarding the Gaviota region does not indicate that the state park or the town in Santa Barbara County are well known outside of Southern California. Moreover, the record indicates that “Gaviota State Park takes its name from the Spanish word for seagull, given to the area by soldiers of the Portola Expedition who supposedly killed a seagull while camping here in 1769.”²³ Thus, Applicant’s evidence does not establish that the alternate geographic meaning would be understood by the relevant purchasing public. Rather, given the large number of

¹⁹ *Id.* at 19-34.

²⁰ *Id.* at 21.

²¹ Applicant’s Br., p. 2, 12 TTABVUE 3; TMEP § 1207.01(b)(vi)(B).

²² Applicant’s Br., p. 2, 12 TTABVUE 3.

²³ Applicant’s Request for Reconsideration of September 13, 2017, Silverstein Dec., Exh. D, p. 49.

Spanish speakers in the United States and the fact that consumers who know of the Gaviota region also might know that it derives its name from the Spanish word for “seagull,” we find it likely that these Spanish speakers would “stop and translate” GAVIOTA into its English equivalent, SEAGULL.

As our primary reviewing court recognized, “the PTO may reject an application . . . solely because of similarity in meaning of the mark sought to be registered with a previously registered mark.” *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983). Generally, however, applying the doctrine of foreign equivalents is only part of the determination of whether the marks being compared are confusingly similar. “[S]uch similarity as there is in connotation must be weighed against the dissimilarity in appearance, sound, and all other factors, before reaching a conclusion on likelihood of confusion as to source.” *Id.* See also, *In re Ithaca Indus., Inc.*, 230 USPQ 702, 704 (TTAB 1986) (“[O]ther factors to be considered are the dissimilarity in overall appearance and pronunciation of the marks, the differences in the goods to which the marks are applied, and the degree of suggestiveness of applicant’s mark and the cited mark as applied to the respective goods.”).

When we compare the marks in their entirety, the similarity in meaning is obvious and substantial. GAVIOTA is a direct translation of SEAGULL, and therefore the two marks have the same meaning. Moreover, SEAGULL is arbitrary as applied to plumbing fixtures or water purification units, and therefore it is conceptually strong as a trademark. *Palm Bay*, 73 USPQ2d at 1692 (“VEUVE is an

arbitrary term as applied to champagne and sparkling wine, and thus conceptually strong as a trademark.”).

We recognize that the similarity of connotation of the marks, by itself, is not determinative and that this factor must be weighed against the dissimilarities in sound and appearance of the marks and all the other relevant factors bearing on the likelihood of confusion. However, when we consider the similarity of the marks in their entireties, we find that the similarity of connotation and commercial impression, together with the relative strength of the mark and the absence of any other significant meaning of GAVIOTA, combine to outweigh the dissimilarities in the marks.

This *du Pont* factor weighs in favor of a finding of likelihood of confusion with respect to the cited registration.

C. Consumer sophistication.

Finally, we address Applicant’s contention that the respective goods are purchased with care. This argument concerns the fourth *du Pont* factor, the “conditions under which and buyers to whom sales are made, i.e., ‘impulse’ v. careful, sophisticated purchasing.” 177 USPQ at 576. Applicant argues that “the high sophistication of the consuming public and the high price points for the products offered under both marks . . . lead consumers to take heightened care when making purchasing decisions.”²⁴ Applicant’s Chairman of the Board, Fred Silverstein, stated:

[T]he purchasers of [Applicant’s] goods are generally contractors, plumbers or other professionals in the

²⁴ Applicant’s Br., p. 4, 12 TTABVUE 5.

construction and design industries. The purchasers of such products are likely to exercise a high degree of care and show a high level of sophistication in making purchasing decisions, especially given the high price points of California Faucets' and GEI's products.²⁵

Other than the Silverstein declaration, there is no direct evidence in the record regarding the classes of the purchasers of Applicant's and Registrant's goods. Applicant's identification of goods is not limited as to classes of purchasers, and we must assume that the goods will be offered to all normal classes of customers for such goods. *Octocom*, 16 USPQ2d at 1788 (“[A]n application having no restriction . . . obviously is not narrowed by testimony that the applicant’s mark is, in fact, restricted to a particular class of purchasers.”) As noted supra, the respective goods are sold online and, therefore, may be sold to consumers who are not “professionals in the construction and design industries.” Precedent requires that we base our decision on the least sophisticated potential purchasers which may be ordinary consumers exercising only an ordinary degree of care. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014).

Even assuming some consumers of the identified goods exercise care, it is well-settled that careful or sophisticated purchasers are not immune from source confusion:

That the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods. “Human memories even of discriminating purchasers . . . are not infallible.” (Citation omitted).

²⁵ Applicant's Request for Reconsideration of September 13, 2017, Silverstein Dec., para. 9, p. 11.

Sophistication of buyers and purchaser care are relevant considerations, but are not controlling on this factual record.

In re Research & Trading Corp., 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986).

This *du Pont* factor is neutral.

D. Conclusion

We have considered all of the arguments and evidence of record, including any not specifically discussed herein, as they pertain to the relevant *du Pont* likelihood of confusion factors. We are not persuaded that even consumers exercising a higher degree of purchasing care would not be confused when the marks GAVIOTA and SEAGULL are used in connection with related goods. Assuming such consumers exercise care with respect to the identified goods, we find that the fourth *du Pont* factor would weigh slightly against a likelihood of confusion but would not outweigh the first two *du Pont* factors. We find that Applicant's mark is likely to cause confusion with the mark in cited Registration No. 2552790 when used in association with the goods identified in the application.

II. Translation Requirement

Trademark Rule 2.32(a)(9), 37 CFR 2.32(a)(9) requires an application to include an English translation of any non-English wording in the mark. Relying on that rule, the Examining Attorney, having determined that the mark has meaning in Spanish, required Applicant to provide an English translation for the mark.²⁶

²⁶ Office Action of September 29, 2017, pp. 57-74.

The meaning of words is of critical importance in a trademark application. A translation made part of the application provides public notice of the meaning of the words in applied-for matter, allowing third parties to assess the scope of an applicant's or registrant's rights. Accordingly, the requirement for submission of a translation of GAVIOTA for the record is affirmed.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Lanham Act is affirmed. The refusal to register the mark in the absence of a disclaimer also is affirmed.