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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Richard Rawlings' Garage, LLC*

Serial No. 87039427

Shannon W. Bates of Harper Bates & Champion LLP,  
for Richard Rawlings' Garage, LLC

Inga Ervin, Trademark Examining Attorney, Law Office 111,  
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Before Mermelstein, Shaw, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Richard Rawlings' Garage, LLC ("Applicant") seeks registration on the Principal Register of the mark RICHARD RAWLINGS' GARAGE (in standard characters) for "Headgear, namely, hats, caps, bandanas and beanies; Hooded pullovers; Hooded sweatshirts; Jackets; Pullovers; Sweatshirts; T-shirts; Tank Tops; Socks; Underwear;








all of the aforementioned goods bearing ornamental designs that associate the goods with the persona of Richard Rawlings or his businesses” in International Class 25.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with twelve registered marks (all owned by the same registrant) comprising or consisting of the term RAWLINGS for various clothing items, including sports-related apparel. The twelve cited marks are summarized in the chart below:

Reg. No.	Mark	Identification of Goods
799922	RAWLINGS (in typed form) <sup>2</sup>	“sporting and athletic clothing of all kinds including baseball shoes, etc.”
1147720		“baseball shoes, baseball uniforms exclusive of the protective elements thereof, baseball stockings; softball uniforms exclusive of the protective elements thereof, softball shoes; football uniforms exclusive of the protective elements thereof; football pants and jerseys; basketball pants and jerseys, basketball warm-up suits; and all purpose shoes.”
1252330		“sportswear and activewear clothing and footwear for men, women, and children-namely, shirts, pants, sweaters, jackets, socks, sweatshirts, shorts, warm-up tops, warm-up

<sup>1</sup> Application Serial No. 87039427, filed on May 17, 2016, based on an allegation of bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The application includes the following statement: “The name(s), portrait(s), and/or signature(s) shown in the mark identifies Richard Rawlings, whose consent(s) to register is made of record.”

<sup>2</sup> Prior to November 2, 2003, “standard character” drawings were known as “typed” or “typeset” drawings. A typed or typeset mark is the legal equivalent of a standard character mark. See TRADEMARK MANUEL OF EXAMINING PROCEDURE (“TMEP”) § 807.03(i) (October 2018).

Reg. No.	Mark	Identification of Goods
		pants, jumping and running shoes, and cleated shoes.”
4446604	RAWLINGS (in standard characters)	“socks; athletic socks; uniform socks.”
4446605		“socks; athletic socks; uniform socks.”
4435268		“socks; athletic socks; uniform socks.”
4435269		“socks; athletic socks; uniform socks.”
4664009		“Headbands; wristbands; skull caps; handwarmers; sports jerseys; sports game jackets; baseball batting practice jerseys; softball batting practice jerseys; t-shirts; fleece tops; fleece pants; polo shirts; wind resistant jackets.”
4684932		“Headbands; wristbands; skull caps; handwarmers; sports jerseys; sports game jackets; baseball batting practice jerseys; softball batting practice jerseys; T-shirts; fleece tops; fleece pants; polo shirts; wind resistant jackets.”
4692702		“Underwear; athletic briefs; baby apparel, namely, shirts, pants, one piece garments.”
4696174	RAWLINGS (in standard characters)	“Underwear; athletic briefs; baby apparel, namely, shirts, pants, one piece garments.”
4921135		“Headbands; wristbands; skull caps; handwarmers; sports jerseys; sports game jackets; baseball batting practice jerseys; softball batting practice jerseys; t-shirts; fleece tops; fleece pants; polo shirts; wind

Reg. No.	Mark	Identification of Goods
		resistant jackets; underwear; athletic briefs; sliding shorts.”

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register.<sup>3</sup>

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); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *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.”).

In this case, we have based our Section 2(d) likelihood of confusion findings and decision on only two of the cited registrations, i.e., Registration No. 4446604, for the standard character mark RAWLINGS for “socks; athletic socks; uniform socks,” and

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<sup>3</sup> The TTABVue and Trademark Status and Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

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Registration No. 4921135, for the mark **RAWLINGS** for “Headbands; wristbands; skull caps; handwarmers; sports jerseys; sports game jackets; baseball batting practice jerseys; softball batting practice jerseys; t-shirts; fleece tops; fleece pants; polo shirts; wind resistant jackets; underwear; athletic briefs; sliding shorts.”

A finding of likelihood of confusion between Applicant’s mark and these two previously registered marks suffices by itself to bar registration of Applicant’s mark under Section 2(d); we need not reach likelihood of confusion as to the remaining cited registrations. *See In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1201-02 (TTAB 2009).

A. Similarity of the Goods

We initially turn to the comparison of the goods identified in Applicant’s application vis-à-vis the goods identified in the cited registrations, the second *du Pont* factor. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comps. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.2d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002). It is well-settled that the goods of Registrant and Applicant need not be identical or competitive, or even be offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to

the mistaken belief that they originate from the same source. *See Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012) (citation omitted); *Hilson Research, Inc. v. Soc’y for Human Res. Mgmt.*, 27 USPQ2d 1423 (TTAB 1993). The issue here, of course, is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In making our determination regarding the relatedness of the goods, we must look to the goods as identified in Applicant’s application and the cited registrations, i.e., Registration Nos. 4446604 and 4921135. *See Stone Lion Capital*, 110 USPQ2d at 1162 (quoting *Octocom Sys.*, 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.”)); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). Registration must be refused if Applicant’s mark for any of its identified goods is likely to cause confusion with the Registrant’s marks for any of its identified goods. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Applicant’s identified goods include “caps,” “socks,” “t-shirts,” “underwear” and “jackets.” The identification of goods in cited Registration No. 4446604 includes goods identical to those identified in Applicant’s involved application, namely, “socks.”

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Similarly, the identification of goods in cited Registration No. 4921135 includes the identical goods “t-shirts” and “underwear.” Moreover, Applicant’s broadly-worded “caps” and “jackets” encompasses Registrant’s “skull caps,” as well as “sports game jackets” and “wind resistant jackets,” identified in cited Registration No. 4921135. Accordingly, the goods at issue are identical in part.

Applicant argues, however, that since its identification of goods includes the restrictive language “all of the aforementioned goods bearing ornamental designs that associate the goods with the persona of Richard Rawlings or his businesses,” consumers will be able to distinguish Applicant’s goods from those identified in the cited two registrations. Additionally, Applicant argues that Registrant’s goods consist primarily of sporting apparel while Applicant’s goods are products related to Richard Rawlings or his persona. We are not persuaded by Applicant’s arguments.

Although Applicant contends that it does not provide products in the sporting goods market, nothing in Applicant’s identification states that Applicant’s goods cannot, or will not be sold, or worn as sporting apparel. Further, even though some of Registrant’s goods are clearly for athletic purposes (for example, the identification in Registration No. 4446604 includes “athletic socks” and the identification of goods in Registration No. 4921135 includes “sports jerseys; sports game jackets; baseball batting practice jerseys; softball batting practice jerseys”), not all of the Registrant’s goods are specifically sports-related. We must consider separately each item listed in an identification of goods. The fact that some of Registrant’s goods may be sports-related by their nature does not limit other goods which are of more general use and

not specifically limited to sports apparel. *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1167–68 (TTAB 2013) (citing *In re Thor Tech Inc.*, 90 USPQ2d 1634 (TTAB 2009)). For example, some of the Registrant's goods, namely, "socks" in Registration No. 4446604 and "t-shirts" and "underwear" in Registration No. 4921135, are not specifically related to sports apparel, and are also identical to Applicant's "t-shirts, underwear and socks." Therefore, despite Applicant's arguments to the contrary, Applicant's goods and the Registrant's goods are, in fact, identical in part.

Moreover, the inclusion of the restrictive language "all of the aforementioned goods bearing ornamental designs that associate the goods with the persona of Richard Rawlings or his businesses" in Applicant's identification of goods is insufficient to distinguish the goods at issue. First, the restrictive language does not specify the nature or the extent of the ornamental designs that purportedly associate Applicant's goods with the persona of Richard Rawlings. Second, the restricting language would not obviate a finding that Applicant's and Registrant's goods are identical in part.

The Court of Appeals for the Federal Circuit has already addressed circumstances similar to those in this case when it considered a restriction limiting goods to the marketing of an individual's persona in an identification of goods in *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017), *aff'g* 116 USPQ2d 1406 (TTAB 2015). In that case, the identification of goods included the wording "associated with William Adams, professionally known as 'will.i.am,'" and



Applicant argued that its mark would be perceived as identifying Mr. Adams, and that this perception would, in some way, affect the marketing of the goods and the customers to whom they are directed. The Board rejected this argument because the record did not establish that Mr. Adams was widely known by the mark “i.am” and, even if the Board “accept[ed] Applicant’s contention that Mr. Adams is known by ‘i.am’ and that this brand has gained notoriety, the statute still ‘protects the registrant and senior user from adverse commercial impact due to use of a similar mark by a newcomer.’” *In re i.am.symbolic, LLC*, 116 USPQ2d at 1410 (quoting *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993)). The Federal Circuit affirmed the Board’s decision, explaining:

We agree with the PTO that Symbolic has failed to show reversible error in the Board’s determination that the will.i.am restriction does not impose a meaningful limitation in this case for purposes of likelihood of confusion analysis. It is well established that the Board may not read limitations into an unrestricted registration or application. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1043 [216 USPQ 937] (Fed. Cir. 1983) (“There is no specific limitation here, and nothing in the inherent nature of SquirtCo’s mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The board, thus, improperly read limitations into the registration.”); *see also* 15 U.S.C. § 1057(b) (“A certificate of registration of a mark upon the principal register ... [is] prima facie evidence ... of the owner’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.” (emphases added)). However, where both the applicant’s and the registrant’s identifications of goods recite limitations, those limitations may be considered in analyzing the *DuPont* factors. *See M2 Software*, 450 F.3d at 1382-83. Here, the registrations do not contain an express limitation, and ..., the will.i.am restriction does not distinguish the mark sufficiently from the registrants’ marks to overcome the evidence of likelihood of confusion.

*In re i.am.symbolic, LLC*, 123 USPQ2d at 1748. The Federal Circuit also found that

the Board did not err in holding that the restrictive language did not (1) limit the goods “with respect to either trade channels or class of purchasers”; (2) “alter the nature of the goods identified”; or (3) “represent that the goods will be marketed in any particular, limited way, through any particular, limited trade channels, or to any particular class of customers.” *Id.* at 1750.

The same conclusion holds true here. Because we are limited to the identifications set forth in Applicant’s involved application and the cited registrations in determining the relatedness of the goods and since there is no need to consider extrinsic evidence regarding the nature of the goods for likelihood of confusion purposes since the respective goods are defined in commonly understood terms, we find that the restrictive language proposed by Applicant would not in any way alter the nature, quality or essence of the identical goods at issue, their channels of trade, or the customers to whom they are marketed and sold.

Moreover, the restrictive language does not expressly indicate how the ornamental designs ascribed to Applicant’s goods would affect consumer perception of why Applicant’s goods would differ in any substantial way from identical clothing items sold by third parties, including Registrant. Although Applicant describes these designs as “ornamental,” their function is to “associate the goods with the persona of Richard Rawlings or his businesses.” These ornamental designs are therefore used to indicate that Mr. Rawlings or his business are the source of the goods on which they appear. In other words, the ornamental designs are *trademarks* which will appear on Applicant’s goods, along with the applied-for mark, allegedly mitigating any

likelihood of confusion.

Applicant's theory is problematic. For one thing, Applicant has not specified the nature of its ornamental designs, so it is impossible to say whether they would, if used in conjunction with its applied-for mark, have any effect on a likelihood of confusion analysis. But more importantly, Applicant has applied to register the standard character mark RICHARD RAWLINGS' GARAGE. As such, our analysis is limited to that mark, without consideration of any other marks or trade dress that Applicant may use with it. "The correct inquiry requires comparison of the applied-for mark . . . to the registrants' marks." *In re i.am.symbolic, LLC*, 123 USPQ2d at 1749 (citing *Denney v. Elizabeth Arden Sales Corp.*, 263 F.2d at 347, 120 USPQ 480, 481 (CCPA 1959)); *Kimberly Clark Corp. v. H. Douglas Enters., Ltd.*, 774 F.2d 1144, 1147, 227 USPQ 541, 543 (Fed. Cir. 1985) ("[A] distinction in trade dress cannot weigh against likelihood of confusion with respect to the registration of a simple word mark. . . . The reason is that such dress might well be changed at any time; only the word mark itself is to be registered."). Thus, we cannot determine whether Applicant's ornamental designs would, in fact, mitigate any likelihood of confusion, and even if they would, we cannot consider them because they are not part of the applied-for mark.

The second *du Pont* factor therefore strongly favors a finding of likelihood of confusion.

#### B. Similarity of Trade Channels and Classes of Purchasers

Next we consider established, likely-to-continue channels of trade, the third *du Pont* factor. Because the identifications of Applicant's goods and Registrant's goods

are identical in part and have no meaningful restrictions as to channels of trade or classes of customers, it is presumed that the trade channels and classes of purchasers are the same for the identical goods. *See In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Am. Cruise Lines, Inc.*, 128 USPQ2d 1157, 1158 (TTAB 2018).

Again, Applicant argues that the restrictive language included in its identification of goods distinguishes the trade channels and classes of purchasers of the respective goods. Additionally, Applicant relies on extrinsic evidence in an attempt to demonstrate that the Registrant's goods are sporting goods<sup>4</sup> while Applicant's goods are associated with Richard Rawlings, a purportedly famous TV personality known for his automotive reality show, *Fast N' Loud*, which features his Gas Monkey Garage.<sup>5</sup> For the reasons discussed above, we find that the restrictive language does not limit the trade channels in which Applicant's goods would travel or restrict the classes of consumers who would purchase them. And of course, nothing in the application has any effect on the trade channels or purchasers for the Registrant's goods. Moreover, Applicant may not rely on extrinsic evidence to restrict the classes of customers or the channels of trade; since the identification of goods do not restrict

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<sup>4</sup> Applicant's July 24, 2017 Response to Office Action, Exhs. J and K, TSDR pp. 56-61.

<sup>5</sup> Applicant's July 24, 2017 Response to Office Action, Exhs. A, F, G, and H, TSDR pp. 13-18, 37-44.

either, we cannot consider the asserted differences in our determination. *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d at 1165; *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008); *In re Bercut-Vandervoot & Co.*, 229 USPQ 763, 764 (TTAB 1986) (extrinsic evidence and argument suggesting trade-channel restrictions not specified in application rejected). For these reasons, we reject Applicant's arguments.

Thus, the third *du Pont* factor also weighs in favor of finding a likelihood of confusion.

### C. Similarity of the Marks

We finally turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Du Pont*, 177 USPQ at 567. Similarity in any one of these elements may be sufficient to find the marks similar. *In re Thor Tech Inc.*, 90 USPQ2d at 1635; *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988). In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs. Inc.*, 101 USPQ2d at 1721; *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enters. Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prods. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

"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 [owners].” *Coach Servs. Inc.*, 101 USPQ2d at 1721 (internal quotation marks omitted). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 102 USPQ2d at 1438; *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).

Applicant’s mark is RICHARD RAWLINGS’ GARAGE in standard characters. The cited marks are RAWLINGS in standard characters and **RAWLINGS**. Applicant argues that the marks at issue convey different commercial impressions since Applicant’s mark would be perceived by consumers as referring to Richard Rawlings.<sup>6</sup> As noted above, Applicant contends that Mr. Rawlings is a famous TV reality show personality and has allegedly gained much notoriety through appearances in his television program, as well as his appearances in television commercials advertising Dodge automobiles.<sup>7</sup> In view of such fame, Applicant maintains that when consumers see or hear the terms RICHARD RAWLINGS or RICHARD RAWLINGS’ GARAGE used as a product brand, the mark would

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<sup>6</sup> Applicant’s Appeal Brief, pp. 5-6, 7 TTABVUE 6-7.

<sup>7</sup> *Id.* at p. 5, 7 TTABVUE 6.

immediately call to mind the image and persona of one individual, namely, Richard Rawlings.<sup>8</sup>

In support of its argument regarding the fame of Mr. Rawlings, Applicant has submitted, among other things, the following evidence:<sup>9</sup>

1. A Wikipedia entry for Richard Rawlings;
2. An article dated October 26, 2018 from the Dallas Observer concerning Richard Rawlings and his reality show Fast N' Loud;
3. A listing of episodes of the television show Fast N' Loud from Jan. 16 2017 till March 27, 2017;
4. An online article from the website [www.pilgrimstudios.com](http://www.pilgrimstudios.com) discussing how the show Fast N' Loud was the number 1 cable program among men for the sixth consecutive Monday;
5. An online article dated September 2013 from the website [www.dmagazine.com](http://www.dmagazine.com) discussing Mr. Rawlings and his Discovery Channel program Fast N' Loud;
6. Excerpts from Mr. Rawlings' Facebook page showing that the profile has been "liked" by approximately 2.5 million people;
7. Excerpts from Mr. Rawlings' Twitter feed indicating that he has 295,000 followers;
8. An online article from [www.dallasnews.com](http://www.dallasnews.com) discussing Mr. Rawlings' appearance on a Dodge automobile commercial; and
9. Excerpts from Mr. Rawlings' website [www.richardrawlingsgarageshop.com](http://www.richardrawlingsgarageshop.com) exhibiting goods sold under the Richard Rawlings' Garage mark.

We initially note that the fame of a junior party does not obviate a finding of likelihood of confusion. The *du Pont* factors only list fame of the *prior* mark as

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<sup>8</sup> *Id.*

<sup>9</sup> Applicant's July 24, 2017 Response to Office Action, Exhs. A-H, and M, TSDR pp. 13-44, 68-70.

relevant to our analysis, and the fame of a prior mark under our jurisprudence does not minimize confusion but rather is a factor strongly supporting a finding of likely confusion. *In re Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985) (inclusion of applicant's DIOR house mark in LE CACHET DE DIOR does not obviate confusion with registrant's CACHET mark and in fact may serve to aggravate confusion). In any event, the Trademark Act “protects the registrant and senior user from adverse commercial impact due to use of a similar mark by a newcomer.” *In re Shell Oil Co.*, 26 USPQ2d at 1690. Simply put, “a junior party’s fame cannot excuse likelihood of confusion created by its use of a mark similar to one already in use.” *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1602 (TTAB 2011). Thus, even if we were to find that Mr. Rawlings or his brand is famous, it would not support a finding that confusion is not likely.

But even if we were to accept Applicant’s theory that the fame of a junior user can obviate a finding of likelihood of confusion, the evidence of record does not establish that Mr. Rawlings’ persona or his brand has achieved such a level of notoriety or fame that would change the commercial impression of Applicant’s mark in any meaningful way so as to distinguish it from Registrant’s marks. In considering Applicant’s unsolicited media attention, namely, four online publications, we find that this media coverage is insufficient to establish the fame claimed by Applicant. This especially holds true since the record does not indicate the circulation of the online articles submitted or the number of persons who have actually read these articles. Insofar as Applicant’s Wikipedia evidence is concerned, we find that while



this evidence has some probative value, it is insufficient standing alone to establish the claimed notoriety of Mr. Rawlings, particularly since much of the information provided by the Wikipedia entry has not been independently corroborated with other reliable evidence. *See In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028 (TTAB 2007). Moreover, even though the evidence indicates that Mr. Rawlings' television show *Fast N' Loud* (aired on Mondays on the Discovery Channel) is popular among male viewers and that it has an average weekly viewership of 2.65 million people, there is no evidence to compare this viewership with other television programming to ascertain the degree of popularity of Mr. Rawlings' show with other television programs. With regard to Applicant's Facebook and Twitter evidence, Applicant has failed to provide any context for these figures, so we cannot measure against it how many Facebook "likes" or Twitter followers its competitors, including Registrant, have received via their own Facebook and Twitter accounts, if any.

Turning now to the marks themselves, we note that 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. *Stone Lion*, 110 USPQ2d at 1161; *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Keeping this principle in mind, we observe that Applicant's and Registrant's marks are comprised, either in whole or in part, of the term RAWLINGS. Moreover, the entirety of the cited marks, RAWLINGS, is encompassed within Applicant's mark; in such cases, confusing similarity has often been found. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d

1257, 1260 (Fed. Cir. 2010) (ML similar to ML MARK LEES); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL and BENGAL LANCER and design found to be similar); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY similar to LILLI ANN); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE similar to CREST CAREER IMAGES).

Furthermore, in Applicant's mark, the wording "RICHARD RAWLINGS" would likely be understood to be a personal name, i.e., the name of someone with the given name RICHARD and the surname RAWLINGS. Because the literal portion of the cited marks consist only of the surname RAWLINGS, consumers seeing the marks on identical goods are likely to assume that RICHARD RAWLINGS is the same person, or is affiliated with, the person referred to in Registrant's RAWLINGS marks. Therefore, the inclusion of the term RICHARD does not distinguish the marks. We also find that the addition of the term GARAGE at the end of Applicant's mark is insufficient to differentiate the marks. Likelihood of confusion is not necessarily avoided between otherwise confusingly similar marks merely by adding or deleting other distinctive matter. If an important portion of both marks is the same, as is the case here, then the marks may be confusingly similar notwithstanding some differences. *See, e.g., Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (finding that, even though applicant's mark PACKARD TECHNOLOGIES, with "TECHNOLOGIES" disclaimed, does not incorporate every feature of opposer's HEWLETT PACKARD marks, a similar overall

commercial impression is created); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (holding VANTAGE TITAN for MRI diagnostic apparatus, and TITAN for medical ultrasound device, likely to cause confusion, noting that the marks are more similar than they are different and that the addition of applicant's "product mark," VANTAGE, to the registered mark would not avoid confusion). It is often the first part of a mark (in this case, the wording RICHARD RAWLINGS') which is most likely to be impressed upon the mind of a purchaser and remembered when making purchasing decisions. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *see also Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). Although we recognize that GARAGE is an arbitrary term with respect to Applicant's goods, we find it subordinate to the first words of Applicant's mark and, therefore, give it less weight in our comparison of the marks.

Finally, Applicant's mark is a standard character mark, and marks appearing in standard character form may be displayed in any stylization, font, color and size, including the identical stylization of Registrant's **RAWLINGS** mark, because the rights reside in the wording and not in any particular display or rendition. *See Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) ("[T]he argument concerning a difference in type style is not viable where one party asserts rights in no particular display. By presenting its mark merely in a typed drawing, a *difference* cannot legally be asserted by that party.") Thus, because Applicant's mark may be displayed in the identical or in a similar manner as the cited

mark **RAWLINGS**, the stylization of this cited mark is insufficient to distinguish the respective marks. Likewise, since Applicant's mark and the mark in Registration No. 4446604 both appear in standard characters, they both could be presented in the identical or similar stylization.

We recognize that in comparing the marks, we must consider Applicant's and Registrant's marks in their entirety. Thus, we have taken into account all of the differences in appearance, sound, and meaning between them. We nonetheless find that despite these differences, given the similarities between the marks in sound, appearance and meaning due to the shared term RAWLINGS, the marks engender similar overall commercial impressions. This especially holds true when the goods are identical in part, as is the case here. *See Coach Servs. Inc.*, 101 USPQ2d at 1722 ("When trademarks would appear on substantially identical goods, 'the degree of similarity necessary to support a conclusion of likely confusion declines.'") (internal citations omitted).

Accordingly, the similarity between the marks is a factor that weighs in favor of a finding of likelihood of confusion.

## II. Conclusion

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. Because we have found that the marks at issue are similar; that Applicant's identified goods are identical in part to Registrant's goods; that the goods are presumed to move in similar or overlapping trade channels and that they would be offered to the same or similar

classes of purchasers; and that the restrictive language set forth in Applicant's application does not alter the identity of the goods, limit the trade channels in which they travel or restrict the classes of purchasers for such goods, we conclude that Applicant's RICHARD RAWLINGS' GARAGE mark, as used in connection with its goods identified in its involved application, so resembles the cited marks RAWLINGS (in standard characters) and **RAWLINGS** as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

**Decision:** The refusal to register Applicant's RICHARD RAWLINGS' GARAGE mark under Section 2(d) of the Trademark Act is affirmed.