

This Opinion is Not a  
Precedent of the TTAB

Mailed: December 19, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Delta Faucet Company*  
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Serial No. 87044505  
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Edgar A. Zarins, Esq. of Masco Corporation,  
for Delta Faucet Company.

Nelson B. Snyder III, Trademark Examining Attorney, Law Office 107,  
J. Leslie Bishop, Managing Attorney.

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Before Bergsman, Wellington and Ritchie,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Delta Faucet Company (“Applicant”) seeks registration on the Principal Register of the mark SATORI (in standard characters) for “plumbing products, namely, faucets and showerheads,” in Class 11.<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 that

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<sup>1</sup> Application Serial No. 87044505 was filed on May 20, 2016, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1052(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as December 2015.

Applicant's mark so resembles the registered mark SATORI (standard characters) for "bathroom furniture," in Class 20, as to be likely to cause confusion.<sup>2</sup>

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the 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) ("*du Pont*") (cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015)); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *du Pont* factor that is relevant or for which there is evidence of record. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) ("While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant."). In any likelihood of confusion analysis, two key 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."); *see also*

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<sup>2</sup> Registration No. 4737864, registered May 19, 2015.

*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.*, 303 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. The similarity or dissimilarity of the marks.

The marks are identical, in sight, sound, connotation, and commercial impression, and Applicant “acknowledges that the mark of the cited registration is identical to applicant’s mark.”<sup>3</sup>

B. The similarity or dissimilarity and nature of the goods.

To show that faucets and showerheads are related to bathroom furniture, the Trademark Examining Attorney submitted numerous use-based, third-party registrations for the goods listed in both the application and registration at issue.<sup>4</sup> Third-party registrations based on use in commerce that individually cover a number of different goods may have probative value to the extent that they serve 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); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). Representative registrations, with relevant portions of the descriptions of goods, are listed below:

<b>Trademark</b>	<b>Reg. No.</b>	<b>Goods</b>
H+C WATERWARE	3986705	Faucets, showerheads, bathroom furniture

<sup>3</sup> Applicant’s Brief (5 TTABVUE 2).

<sup>4</sup> Attached to the June 29, 2016 Office Action.

Trademark	Reg. No.	Goods
XYLEM	3183362	Bathroom furniture, faucets
SALGAR	3396235	Tap water faucets, bathroom furniture
CORREGO	4073721	Faucets, showerheads, bathroom furniture
NOBAC	4197723	Tap water faucets, bathroom furniture

The Trademark Examining Attorney also submitted excerpts from third-party websites where the third parties advertise the sale of faucets or showerheads and bathroom furniture under the same marks. The third-party websites are listed below:

- Signature Hardware website (signaturehardware.com) advertising the sale of SIGNATURE HARDWARE bathroom furniture and faucets;<sup>5</sup>
- Décor-U.S. website (decorus.com) advertising the sale of EVIVA vanities and faucets;<sup>6</sup>
- Victoria+Albert website (vandabaths.com) advertising the sale of VICTORIA+ALBERT bathroom furniture and faucets and showerheads;<sup>7</sup> and
- American Standard website (americanstandard-us.com) advertising the sale of AMERICAN STANDARD bathroom furniture and faucets.<sup>8</sup>

We find that faucets and showerheads are related to bathroom furniture.

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<sup>5</sup> January 9, 2017 Office Action (TSDR 23-43).

Citations to the TSDR database are in the .pdf format.

<sup>6</sup> *Id.* at TSDR 49-62.

<sup>7</sup> *Id.* at TSDR 64-71.

<sup>8</sup> *Id.* at TSDR 72-81.

C. Established, likely-to-continue channels of trade.

In addition to the above-noted websites, the Trademark Examining Attorney submitted excerpts from the Bathroom Furniture website (bellacor.com),<sup>9</sup> the Modern Bathroom website (modernbathroom.com),<sup>10</sup> and Tub Doctors, Inc. website (thetubdoctors.net)<sup>11</sup> to show that the same entities advertise the sale of faucets, showerheads, and bathroom furniture and that, therefore, those goods are offered in the same channels of trade.

Applicant argues that the “realities of the marketplace results in very different channels of trade.”<sup>12</sup>

Applicant’s goods are traditional plumbing products purchased by consumers for their decorative qualities to deliver water for a specific need. Applicant’s goods are sold through specialized channels related to plumbing products and may require the hiring of a trade specialist. At Big Box retailers, such plumbing products are sold in a specialized department devoted to products delivering water.

In contrast, the goods cited in the registration are simply home furnishings, more specifically, wooden benches. Such goods would be sold through distinct channels of trade dedicated to furniture. Although such goods are intended to be used in the bathroom, they have no relation to the channels of trade for plumbing products.<sup>13</sup>

This contention is unavailing, as there is no limitation in the Registration’s identification of goods indicating that its products are limited to wooden benches. In

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<sup>9</sup> *Id.* at TSDR 44-45.

<sup>10</sup> *Id.* at TSDR 46-48.

<sup>11</sup> *Id.* at TSDR 62-63.

<sup>12</sup> Applicant’s Brief (5 TTABVUE 2).

<sup>13</sup> *Id.*

an *ex parte* proceeding, we are required to give “full sweep” to Registrant’s identified goods. *Paula Payne Prods. Co. v. Johnson Publ’g Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77-78 (CCPA 1973). Registrant’s description of goods is presumed to encompass all products of the nature and type identified in the registration. *See In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

Notwithstanding Applicant’s argument regarding the channels of trade of its own and the cited Registrant’s commercial use of its mark, we may not limit, by resort to extrinsic evidence, or in this case argument, the scope of goods as identified in the cited registration or in the subject application. *E.g., In re Dixie Restaurants Inc.*, 105 USPQ2d, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *In re Fisher Scientific Co.*, 440 F.2d 43, 169 USPQ 436, 437 (CCPA 1971); *In re La Peregrina Ltd.*, 86 SPQ2d 1645, 1646 (TTAB 2008); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986).

When there is no limitation in Applicant’s identification of goods, we must presume that Applicant’s goods move in all channels of trade that would be normal for such goods, and that they would be purchased by all potential customers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)); *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344,

98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983).

As a practical matter, a bathroom home decorating project would likely be considered incomplete if the faucets and showerheads did not complement the bathroom furniture. Such goods are frequently purchased together in a single shopping expedition or renovation project. When designing a bathroom, a purchaser is looking for a certain style so that the fixture, furniture, and overall design work together. The faucets and bathroom furniture, specifically vanities, are complementary products which may be found in the same store, albeit in different departments. In other words, faucets, showerheads, and bathroom furniture are sold to the same consumers at the same time in the same place.

We find that faucets, showerheads, and bathroom furniture are offered in the same channels of trade and offered to the same classes of consumers.

D. Analyzing the factors.

Because the marks are identical, the goods are related and offered in the same channels of trade to the same classes of consumers, we find that Applicant's mark SATORI for "plumbing products, namely, faucets and showerheads" is likely to cause confusion with the registered mark SATORI for "bathroom furniture."

**Decision:** The refusal to register Applicant's mark is affirmed.