

This Opinion is not a
Precedent of the TTAB

Mailed: January 14, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Shenzhen Airmart Technology Co., Ltd.
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Serial No. 87427315
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Linna Chen of Magstone Law LLP,
for Shenzhen Airmart Technology Co., Ltd.

Marco Wright, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

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Before Zervas, Adlin and Lebow,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Shenzhen Airmart Technology Co., Ltd. (“Applicant”) seeks registration on the

Principal Register of the stylized mark **MUZEN** for goods in International

Class 9 identified as:

Acoustic membranes; Blank CD-ROMs for sound or video recording; Cabinets for loudspeakers; Compact disc players; Headphones; Horns for loudspeakers; Juke boxes

for computers; Personal stereos; Portable media players;
Sound transmitting apparatus.¹

According to the application, the English translation of the word “MUZEN” in the mark is “MUSES.”

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 Applicant’s mark is likely to cause confusion with the previously registered mark



for goods in International Class 9 identified as:

Integrated circuits; operational amplifiers; 3-D surround-sound processors; electronic circuits; audio amplifiers; audio circuit boards; computer accelerator boards; and computer expansion boards.²

1. Evidentiary Issue

Applicant submitted new evidence with its appeal brief and the Examining Attorney objected to the submission of such evidence. Because the record in an application should be complete prior to the filing of an appeal, *see* Trademark Rule 2.142(d), 37 C.F.R. §2.142(d), and TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) §§1203.02(e), 1207.01 (2020), we sustain the Examining Attorney’s objection and do not further consider the objected to evidence. *See In re*

¹ Application Serial No. 87427315 was filed on April 27, 2017 based on Applicant’s allegation of an intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

² Registration No. 3938166, issued March 29, 2011. Color is not claimed as a feature of the mark.

Inn at St. John's, LLC, 126 USPQ2d 1742, 1744 (TTAB 2018), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A*, 109 USPQ2d 1593, 1596 (TTAB 2014).

2. Analysis

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) (cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 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 *DuPont* factor that is relevant or for which there is argument and evidence of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *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 goods or services. *See In re Chatam Int'l Inc.*, 380 F.3d 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 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. Similarity or Dissimilarity of the Marks

We consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014); *DuPont*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, 126 USPQ2d at 1746 (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the goods offered under the respective marks is likely to result. *In re i.am.symbolic*, 123 USPQ2d at 1748; *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, *6 (TTAB 2019). The focus is on the recollection of the average purchaser, who normally retains a general rather than

specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *Double Coin Holdings*, 2019 USPQ2d at *6; *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012). We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1160; *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.”). But there is nothing improper in giving more or less weight to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We turn first to the meaning and commercial impression of the marks. The Examining Attorney relies on the doctrine of foreign equivalents to assert that the marks are identical in meaning and similar in commercial impression because MUZEN is Dutch for “muses.” Applicant claims, however, that “MUZEN is a coined term which has no defined meaning in English.”³ Nevertheless, Applicant acknowledges that “[i]f the Doctrine of Foreign Equivalents applies, the [MUZEN]

³ Applicant’s brief at p. 6, 7 TTABVUE 7.

Page references to the application record are to the downloadable .pdf version of the United States Patent and Trademark Office’s Trademark Status & Document Retrieval (TSDR) system. Citations to the briefs are to TTABVUE, the Board’s online docketing system. See *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any number(s) following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear.

and [M MUSES] marks may be deemed to have the same meaning and commercial impression.”⁴

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine similarity of connotation with English word marks. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005). The rule, however, is not absolute and should be viewed merely as a guideline. *Id.* The doctrine should be applied only when: (1) the relevant English translation is direct and literal and there is no contradictory evidence establishing another relevant meaning, *In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1485 (TTAB 2012); and (2) “it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.” *Palm Bay Imps.*, 73 USPQ2d at 1696 (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).

The Examining Attorney submitted entries from Collins Dictionary⁵ and Reverso Dictionary⁶ demonstrating that the English translation of the Dutch word “muzen” is “muses.” From this evidence, we find that the relevant English translation is direct

⁴ Applicant’s brief at p. 8, 7 TTABVUE 9.

⁵ August 1, 2017 Office Action, TSDR 94.

⁶ *Id.*, TSDR 95.

and literal and there is no contradictory evidence establishing another relevant meaning.

To show that Dutch is a common, modern language in the United States, the Examining Attorney submitted evidence that “[a]ccording to the 2000 United States census, 150,396 people spoke Dutch at home”;⁷ Dutch is taught in New York, Los Angeles, Chicago, Washington, D.C. and Boston (*see* evidence of Dutch language classes);⁸ and groups in the United States meet regularly to practice speaking Dutch (*see* evidence of Facebook and Meetup groups for speaking Dutch).⁹ This evidence establishes that Dutch is a common modern language spoken by an appreciable number of consumers in the United States. Because Applicant’s goods are common consumer goods and Applicant states they “are ready-made, for personal use out of the box,”¹⁰ we find that the relevant consumers are members of the general public and that the general public includes those in the United States who speak Dutch.

Applicant argues that the doctrine of foreign equivalents should not be applied because “[MUZEN] is a combination of the words ‘music’ and ‘zen,’” and that the consuming public will understand that “Applicant’s products help Applicant[] produce a ZEN-like experience and understanding out of their everyday life and activities. Applicant’s MUSIC + ZEN goods are for ‘helping everyone listen to the fun

⁷ *Id.*

⁸ June 19, 2020 Office Action, TSDR 4-15.

⁹ *Id.*, TSDR 16-29.

¹⁰ Applicant’s brief at p. 23, 7 TSDR 24.

of life,’ and have a true and deeper understanding of everyday life which could otherwise feel lifeless or without fun.”¹¹ Applicant adds that “consumers would not ignore a coined and instantly recognizable meaning in English to stop and translate a mark unless there is good reason to do so.”¹²

One problem with Applicant’s argument is that Applicant has no evidence that consumers would recognize MUZEN as a combination of “music” and “zen.” Without evidentiary support, Applicant’s argument is unpersuasive. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (citing *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”)). In addition, it is doubtful that consumers would understand the mark the way Applicant suggests, because ZEN is merged into the mark, with no separation through letting size or style to suggest that ZEN is to be perceived as a separate word. The same applies to Applicant’s additional argument – again, without evidentiary support – that “the combination of the shortened form of MUSIC (‘MU’) + ZEN works even in the Dutch language where MUSIC is translated to MUZIEK and ZEN is translated to the same term ZEN.”¹³ There is no reason why Dutch speakers would carve out the term ZEN from Applicant’s mark when the term MUZEN has a defined meaning in Dutch and the mark does not differentiate the term ZEN from the rest of the letters in the mark.

¹¹ Applicant’s brief at p. 13, 7 TTABVUE 14.

¹² *Id.*

¹³ *Id.* at p. 16, 7 TTABVUE 17.

Applicant also argues that Dutch-speaking “consumers are less likely to stop and translate” the applied-for mark in this case because “MUZEN-branded goods do not specifically target Dutch-speakers, and there is no relationship between Applicant and the Dutch language to suggest Applicant’s Mark should take a Dutch meaning.”¹⁴ Even if Applicant’s goods are not targeted to Dutch speakers, the consuming public for Applicant’s goods includes those American consumers proficient in Dutch because there are no limitations in Applicant’s identification of goods. *See In re Spirits Int’l, N.V.*, 90 USPQ2d at 1492; *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006).

As for Applicant’s reliance on *Spirits Int’l, In re Tia Maria, Inc.*, 188 USPQ 524, 525–26 (TTAB 1975), and *Le Cordon Bleu, S.A.R.L. v. Continental Nut Co.*, 494 F.2d 1397, 181 USPQ 646 (CCPA, 1974), for the proposition that in certain cases, the ordinary American purchase would not stop and translate a mark even if he or she knows the language, Applicant misses the point of those cases.¹⁵ The marks in those cases had recognizable meanings in English and hence were not translated into English. That is not the case with the term “muzen.”

Thus, for the foregoing reasons, we find that “it is likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent’ and apply the doctrine of foreign equivalents to Applicant’s mark. Because both marks connote “muses,” we find that the marks are identical in meaning. The additional letter M with the stylized letter “M” does not affect the connotation of the

¹⁴ *Id.* at p. 18, TSDR 19.

¹⁵ *Id.* at p. 16, 7 TTABVUE 17.

mark because the letter “M” is the first letter in “muses.” Further, because the meaning of the marks is the same, with the letter “M” incorporating a female figure evoking a “muse”,¹⁶ we find that the commercial impressions of the marks are the same.

Turning next to the appearance and sound of the marks, the marks have dissimilarities and similarities. The marks are dissimilar because Applicant has no design component in its mark, the lettering styles differ and the middle and terminal letters in MUZEN and MUSES differ. The marks are similar because the wording in Registrant’s mark dominates the mark,¹⁷ MUZEN and MUSES are both two syllable terms and share three of their five letters, the letters “MU” in both marks would be pronounced as “mu” in “museum,” the letters “Z” and “S” are similar in sound, and neither lettering style is particularly notable.¹⁸ On balance, we find that the similarities in sound and appearance outweigh their differences.

¹⁶ A “muse” is defined in Merriam Webster Dictionary as “any of the nine sister goddesses in Greek mythology presiding over song and poetry and the arts and sciences.” April 2, 2020 Office Action, TSDR 2.

¹⁷ The wording dominates the mark because the design in the form of a letter “M” is not likely to be pronounced when calling for the goods. *See In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (wording often dominates over design because it is the wording that purchasers would use to refer to or request the goods).

¹⁸ For purposes of a likelihood of confusion analysis, there is no “correct” or certain pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark. *See, e.g., In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (XCEED for agricultural seed likely to be confused with X-SEED and design); *Centraz Indus. Inc. v. Spartan Chem. Co. Inc.*, 77 USPQ2d 1698, 1701 (TTAB 2006) (noting “there is no correct pronunciation of a trademark” and finding ISHINE (stylized) and ICE SHINE, both for floor finishing preparations, confusingly similar).

Because the marks are identical in meaning for those that speak Dutch, and are similar in commercial impression, meaning and appearance, we find that the *DuPont* factor concerning the similarity of the marks weighs in favor of finding a likelihood of confusion.

b. Similarity or Dissimilarity of the Goods and Trade Channels

The compared goods need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They 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 [the goods] emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The record includes use-based, third-party registration evidence. Use-based third-party registrations may have some probative value to the extent they suggest the goods of Applicant and Registrant are of a kind that may emanate from a single source under a single mark. See *In re I-Coat Co.*, 126 USPQ2d 1730, 1738-39 (TTAB 2018) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff’d per curiam*, 864 F.2d 149 (Fed. Cir. 1988); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993)). See, e.g.:

August 1, 2017 Office Action

- Registration No. 4692574 for the mark “EXECUTION AUDIO” for goods including **audio amplifiers**; audio

cables; **audio circuit boards**; audio electronic components, namely, surround sound systems; audio equipment for vehicles, namely, loud speakers for automotive audio systems; audio equipment for vehicles, namely, stereos, speakers, amplifiers, equalizers, crossovers and speaker housings; **audio speaker enclosures**; sound amplifiers; sound mixers; **sound systems comprising remote controls, amplifiers, loudspeakers and components therefor**; sound transmitting apparatus. TSDR 25.

- Registration No. 4819692 for the mark “ARSWIN” for goods including consumer electronic products, namely, **audio amplifiers**, audio speakers, audio receivers, electrical audio and speaker cables and connectors, audio decoders, video decoders, speakers, power conversion devices, power converters, and power inverters; **sound transmitting apparatus**. TSDR 28.

- Registration No. 5042565 for the mark “EYE” for **personal stereos**; MP3 players; loud speaker systems; consumer electronic products, namely, **audio amplifiers**, audio speakers, audio receivers, electrical audio and speaker cables and connectors, audio decoders, video decoders, speakers, power conversion devices, power converters, and power inverters. TSDR 40.

April 2, 2020 Office Action

- Registration No. 2759630 for the mark “PULSUS” for apparatus for the recording, transmission or reproduction of sound, namely, amplifiers; **integrated circuits**; audio and video receivers; **audio amplifiers for vehicles**; audio systems comprising amplifiers and signal processors; stereo amplifiers for automobiles; mobile audio systems for cellular phones, PDA’s, and web pads comprising amplifiers and signal processors; **portable audio systems for MP3 players, DVD players, and CD/VCD players comprising amplifiers and signal processors**; and loudspeakers. TSDR 3.

- Registration No. 3133188 for the mark “ROCK-OLA” for goods including **audio amplifiers; audio circuit boards**; audio speaker enclosures; audio speakers; audio-video receivers; **compact disc players**; digital audio players;

juke boxes; musical sound recordings; phonograph record players; receivers for audio and video; record players for digital compact disks. TSDR 6.

- Registration No. 4254601 for the mark “EDIFIER STUDIO” for goods including loudspeaker systems; stereo amplifier and speaker base stations; radio receivers; **acoustic membranes; audio amplifiers**; audio mixers; loudspeakers; sound mixers; stereo amplifiers. TSDR 9.

- Registration No. 4533234 for the mark “XREXS” for goods including **amplifiers; audio amplifiers**; audio cables; **blank CD-ROMs for sound or video recording**; earphones and **headphones**. TSDR 21.

The evidence of record also consists of webpage screenshots showing third-parties that offer goods such as those identified in Applicant’s and Registrant’s identification of goods. *See, e.g.:*

August 1, 2017 Office Action

- Crutchfield.com – CD players and audio amplifiers under the mark Cambridge Audio. TSDR 96-97.
- Crutchfield.com – audio amplifier and headphones under the mark McIntosh. TSDR 100-101.
- Crutchfield.com – headphones and audio amplifiers under the mark NAD. TSDR 102-103;

April 2, 2020 Office Action

- Abt.com – CD player and audio amplifier under the mark Yamaha. TSDR 77-78.
- Abt.com – audio amplifier, headphones, and speakers under the mark Bose. TSDR 83-84, 89
- Abt.com – audio amplifiers and headphones under the mark Bowers & Wilkins. TSDR 85-86, 89.

This evidence establishes that there is a commercial relationship between Applicant’s and Registrant’s goods.

Applicant argues that “the differences between the goods compound to make it ... [un]likely consumers would be confused by Applicant’s Mark MUZEN and the cited mark [M MUSES]”; and that Applicant “sells consumer audio products for personal use out of the box” while Registrant’s goods are “sold in-bulk, for industrial purposes, and ha[ve] to be incorporated into larger industrial products before they serve any purpose.”¹⁹ Applicant further explains that “[t]he goods under the Cited Mark are sold to companies and professionals for manufacturing” and are “used with industrial electric circuitry components for incorporation into larger electronics.”²⁰

These arguments are not persuasive because Registrant’s identification of goods includes goods such as audio amplifiers (without limitation on type, channels of trade or classes of consumers) which may be purchased by the general public. *See, e.g.,* webpages from crutchfield.com offering audio amplifiers.²¹ When analyzing an applicant’s and registrant’s goods for similarity and relatedness, that determination is based on the description of the goods in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion* 110 USPQ2d at 1162 (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). Furthermore, in the absence of limitations as to channels of trade or classes of purchasers in the goods in the registration, the presumption is that the goods move in all trade channels normal for such goods and are available to all

¹⁹ Applicant’s brief at p. 23, 7 TSDR 24.

²⁰ *Id.* at pp. 22-23, 7 TSDR 23-24.

²¹ August 1, 2017 Office Action, TSDR pp. 96-103.

potential classes of ordinary consumers of such goods. *See In re I-Coat*, 126 USPQ2d at 1737; *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). The classes of purchasers for Applicant's goods and Registrant's audio amplifiers both include members of the general public and hence overlap, as do the trade channels. In this regard, we note the Examining Attorney's Internet evidence showing that certain of Applicant's and Registrant's goods are offered for sale on the same websites under the same categories.²²

The *DuPont* factors regarding the similarity of the goods and the channels of trade favor a finding of likelihood of confusion.

3. Conclusion

We have found that Applicant's and Registrant's marks are identical in meaning to Dutch speakers and otherwise similar in commercial impression, sound and appearance, that their goods are commercially related, and that their trade channels and classes of purchasers overlap. In view thereof, we find Applicant's mark for its identified goods to be likely to cause confusion with Registrant's mark for its identified goods.

Decision: The refusal to register Applicant's mark under Section 2(d) is affirmed.

²² *Id.*, TSDR 96-103; April 2, 2020 Office Action, TSDR 77-89.