

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Anastasia Confections, Inc.

Serial No. 87588050

James David Johnson of Johnson & Martin, P.A.,
for Anastasia Confections, Inc.

Lisa A. Papale, Trademark Examining Attorney, Law Office 122,
Kevin Mittler, Managing Attorney.

Before Cataldo, Greenbaum, and Johnson,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Anastasia Confections, Inc., seeks registration on the Principal Register of the mark displayed below, identifying “coconut and chocolate confections; cookies; chocolates; chocolate snacks; baked goods, namely, cookies, chocolate-based bakery goods, and coconut-based bakery goods” in International Class 30.¹

¹ Application Serial No. 87588050 was filed on August 29, 2017, based on Applicant’s assertion of a bona fide intent 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 description of the mark and color statement:



The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of a likelihood of confusion with the registered mark THE TASTE OF PARADISE, in typed characters² identifying "processed macadamia nuts" in International Class 29.³

After the Trademark Examining Attorney made the refusal final, Applicant filed a request for reconsideration and appealed to this Board.⁴ We affirm the refusal to register.

I. Likelihood of Confusion

We base our determination of likelihood of confusion under Trademark Act Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the

The mark consists of The wording "ANASTASIA" in stylized font above the wording "TASTE OF PARADISE" in stylized font with an image of three palm trees on an island surrounded by water above the wording, the foregoing within an oval design, all imposed in the foreground of an oval surrounded by a larger oval. Color is not claimed as a feature of the mark.

² 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) ("until 2003, 'standard character' marks formerly were known as 'typed' marks, but the preferred nomenclature was changed in 2003 to conform to the Madrid Protocol ... we do not see anything in the 2003 amendments that substantively alters our interpretation of the scope of such marks").

³ Registration No. 1370368 issued on the Principal Register on November 12, 1985. Section 8 and 15 affidavits accepted and acknowledged. Second Renewal.

⁴ Page references to the application record are to the downloadable .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal are to the Board's TTABVUE docket system.

factors enunciated 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 Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); see also *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019).

We have considered each *DuPont* factor for which there is evidence and argument of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. See *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”); see also *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010) (“Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.”)). Two key considerations are the similarities between the marks and the relatedness of the goods. 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 re FabFitFun, Inc.*, 127 USPQ2d 1670, 1672 (TTAB 2018).

A. The Goods and their Channels of Trade

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration,” *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Applicant’s goods are “coconut and chocolate confections; cookies; chocolates; chocolate snacks; baked goods, namely, cookies, chocolate-based bakery goods, and coconut-based bakery goods” and the goods in the cited registration are “processed macadamia nuts.”

In support of her contention that the goods are related, the Examining Attorney introduced into the record pages from third-party websites for entities providing goods under the same marks, trade names or company names that include both Applicant’s goods and the goods identified in the cited registration. The following examples are illustrative:

- Hamakua Macadamia Nut Company, offers chocolate candies, baked goods and processed macadamia nuts (Office action dated October 3, 2017, TSDR p. 33-37 and Office action dated January 4, 2019, TSDR p. 2-3);
- Royal Hawaiian Orchards, offers chocolate candies and processed macadamia nuts (Office action dated October 3, 2017, TSDR p. 38);
- Island Princess, offers chocolate candies and processed macadamia nuts (Office action dated October 3, 2017, TSDR p. 39);
- Big Island Candies, offers chocolate candies, baked goods, and processed macadamia nuts (Office action dated January 4, 2019, TSDR p. 4-16);

- Dole Plantation, offers chocolate candies, coconut candies, baked goods, and processed macadamia nuts (Office action dated January 4, 2019, TSDR p. 17-19);
- Albanese Candy, offers chocolate candies, baked goods, and processed macadamia nuts (Office action dated January 4, 2019, TSDR p. 20-25);
- Tropical Farms, offers chocolate candies and processed macadamia nuts (Office action dated January 4, 2019, TSDR p. 26-33);
- Hilo Hattie, offers chocolate candies and processed macadamia nuts (Office action dated October 1, 2019, TSDR p. 2-10);
- Hale Kai Lana, offers chocolate candies and processed macadamia nuts (Office action dated October 1, 2019, TSDR p. 11-14);
- Makua Coffee Company, offers chocolate candies and processed macadamia nuts (Office action dated October 1, 2019, TSDR p. 15);
- MacFarms, offers chocolate and coconut candies and processed macadamia nuts (Office action dated May 18, 2020, TSDR p. 2-5); and
- Hawaii's Local Buzz, offers chocolate candies, baked goods, and processed macadamia nuts (Office action dated May 18, 2020, TSDR p. 6-11).

In addition, the Examining Attorney introduced screenshots from the website belonging to the owner of the cited registration, indicating that Registrant also offers, in addition to processed macadamia nuts, chocolate snacks and candies of the type identified in the involved application (Office action dated October 3, 2017, TSDR 40-43).

This evidence clearly demonstrates that numerous entities provide both Applicant's type of goods and Registrant's goods under the same marks or names, and is probative of the relatedness of these goods for likelihood of confusion purposes. *See,*

e.g., In re Davey Prods. Pty Ltd., 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

Applicant argues:

None of Applicant's goods are within the same international class as the goods of the registrant nor are the goods related. Although Applicant's Mark and the Cited Mark are broadly related to food, Applicant and the registrant each offer very different goods, appeal to very different customers, and most obviously, serve completely separate markets.⁵

We disagree. First, the system for classification of goods and services was created for the convenience of the Office, and has no bearing on the issue of likelihood of confusion. The Court of Appeals for the Federal Circuit has stated that "classification is wholly irrelevant to the issue of registrability under section 1052(d), which makes no reference to classification. *Cf.* 15 U.S.C. § 1112...." *Jean Patou, Inc. v. Theon, Inc.*, 9 F.3d 971, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993); *see also In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) ("[T]he fact that goods are found in different classes has no bearing on the question of likelihood of confusion. The separation of goods into the various classes of the classification schedule is merely a convenience for the Office and is not intended as a commentary on their relationship to one another in the marketplace."); *Nat'l Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.5 (TTAB 1990) ("The classification system was established for the convenience of the Office rather than to indicate that goods in the same class are necessarily related or that classification in different classes indicates that they are not related.").

⁵ Applicant's brief; 7 TTABVUE 18.

Second, the evidence discussed above clearly demonstrates that Applicant's various coconut and chocolate snacks and candies are offered by the same entities, often under the same brands and marks, as the processed macadamia nuts identified in the cited registration by Registrant and numerous third parties. Consumers are able to distinguish Applicant's goods from the goods in the cited registration; however, that is not the standard. *See, e.g., Hydra Mac, Inc. v. Mack Trucks, Inc.*, 507 F.2d 1399, 184 USPQ 351 (CCPA 1975) ("the confusion found to be likely is not as to the products but as to their source") (citation omitted). The test is not whether consumers would be likely to confuse the goods themselves, but rather whether they likely would be confused as to their source. *In re Anderson*, 101 USPQ2d 1912, 1919 (TTAB 2012). In this case, the evidence demonstrates that consumers are accustomed to encountering both Applicant's goods and the goods in the cited registration provided, often under the same marks, by the same sources.

The third *DuPont* factor concerns "[t]he similarity or dissimilarity of established, likely-to-continue trade channels." *Stone Lion Capital v. Lion Capital*, 110 USPQ2d at 1161 (quoting *DuPont*, 177 USPQ at 567). We are not persuaded by Applicant's conclusory statement that because its goods differ from the goods identified by the registered mark, the goods are marketed to different consumers through different trade channels.⁶ Because there are no limitations as to channels of trade or classes of purchasers in the recitation of goods in the involved application or the cited registration, we must presume that the identified goods move in all channels of trade

⁶ Applicant's brief; 7 TTABVUE 16.

normal for such goods and are available to all potential classes of ordinary consumers thereof. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). It is the identifications of goods that controls, not what unsupported argument or even, if it was present, extrinsic evidence may show about the specific nature of the goods as provided in the marketplace. *Stone Lion*, 110 USPQ2d at 1162; *Midwest Gaming*, 106 USPQ2d at 1165; *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764-65 (TTAB 1986). As noted above, the Examining Attorney has introduced evidence that the goods offered under the involved mark and cited mark are offered for sale on the same webpages of Registrant and also several third parties. This evidence supports a finding that these goods are offered in at least one common channel of trade, that is, the websites operated by these entities and, where applicable, their corresponding physical locations.

Based upon the foregoing, we find that Applicant's goods are related to the goods identified in the cited registration and that such goods may be encountered in the same channels of trade by the same classes of consumers. The second and third *DuPont* factors weigh in favor of finding a likelihood of confusion.

B. The Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's mark and the mark in the cited registration in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Stone Lion Capital v. Lion Capital*, 110 USPQ2d at 1160; *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)); accord *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.").

"The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted); see also *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016). Consumers may not necessarily encounter the marks in close proximity and must rely upon their recollections over time. *In re Mucky Duck Mustard*, 6 USPQ2d 1467, 1468 (TTAB 1988), *aff'd mem.*, 864 F.2d 149 (Fed. Cir. 1988).



Applicant's mark substantially adopts the wording of the typed or standard character mark THE TASTE OF PARADISE in the cited registration in its entirety, deleting the word THE, and adding the term ANASTASIA and an island, palm tree and water design within an oval carrier. "Marks have frequently been found to be similar where one mark incorporates the entirety of another mark, as is the case here." *Coca-Cola Bottling Co. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (BENGAL is similar to BENGAL LANCER); *Johnson Publ'g Co. v. Int'l Dev. Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY is similar to EBONY DRUM); *In re S. Bend Toy Mfg. Co.*, 218 USPQ 479, 480 (TTAB 1983) (LIL' LADY BUG is similar to LITTLE LADY); *see also TiVo Brands LLC v. Tivoli, LLC*, 129 USPQ2d 1097, 1115 (TTAB 2019).

The omission of the term THE from Applicant's mark is of no consequence. *See Jay-Zee, Inc. v. Hartfield-Zodys, Inc.*, 207 USPQ 269 (TTAB 1980) ("Since the psychological and marketing impact of petitioner's mark in its earlier version clearly was derived from the word 'IMAGE,' the omission of the word 'THE' (the definite article serving merely to emphasize 'IMAGE') from the later version did not interrupt the continuity of use"); *United States National Bank of Oregon v. Midwest Savings and Loan Association*, 194 USPQ 232, 236 (TTAB 1977) ("The definite article 'THE' likewise adds little distinguishing matter because the definite article most generally serves as a means to refer to a particular business entity or activity or division

thereof, and it would be a natural tendency of customers in referring to opposer's services under the mark in question to utilize the article 'THE' in front of 'U-BANK' in view of their uncertain memory or recollection of the many marks that they encounter in their everyday excursion into the marketplace"). The wording (THE) TASTE OF PARADISE in both marks suggests a laudatory feature of the identified goods, namely that they are so delicious that they taste divine. Thus, the wording common to the marks is nearly identical in appearance, meaning and sound.

Applicant's mark also includes the prominently-sized term ANASTASIA suggesting an individual, real or imaginary, who is the source of the goods and also identifies Applicant. The term ANASTASIA is also prominently placed in the center of the mark. We accordingly find this term to be visually dominant and equally distinctive of the goods as TASTE OF PARADISE.



Applicant's mark

also includes the design of an island with

palm trees and surrounding water inside of a double oval carrier. This design is equally sized as the wording and also appears to be distinctive as applied to Applicant's goods, further suggesting that the products identified thereby are heavenly or divine in flavor. However, it is settled that where, as here, a mark is comprised of both words and a design, the words are normally accorded greater weight, in part because consumers are likely to remember and use the words to request the goods. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed.

Cir. 2012) (“the verbal portion of a word and design mark likely will be the dominant portion”); *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (“if one of the marks comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services” and “because applicant’s mark shares with registrant’s mark that element responsible for creating its overall commercial impression, the marks are confusingly similar”). There is nothing in the record to suggest that consumers will utilize the design portion of Applicant’s mark to request its goods rather than the more conventional wording.

We recognize the differences between the marks, namely, the prominently sized term ANASTASIA and the tropical design that are not present in the registered mark. Nonetheless, viewing the marks as a whole, we find purchasers may reasonably assume, due to the nearly identical nature in sound, appearance, connotation, and commercial impression between the wording TASTE OF PARADISE in Applicant’s mark and THE TASTE OF PARADISE comprising the whole of the registered mark, that Applicant’s goods offered under the



mark emanate from the same source as the goods in the cited registration.

Upon evaluating Applicant’s mark and the registered mark, we find they are more similar than dissimilar “in their entirety as to appearance, sound, connotation and

commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 USPQ2d at 1691 (quoting *du Pont*, 177 USPQ at 567).

This *DuPont* factor weighs in favor of a finding of likelihood of confusion.

C. Strength of the Cited Mark

Finally, we consider the conceptual strength of the registered mark in relation to processed macadamia nuts.⁷ *In re FabFitFun, Inc.*, 127 USPQ2d at 1673. The Examining Attorney submitted with her Office action dated October 3, 2017, TSDR 26-42, the definitions of terms comprising the cited mark: TASTE – “to ascertain the flavor of by taking a little into the mouth;” and PARADISE – “a place or state of bliss, felicity, or delight, heaven.”⁸

In the context of the goods identified in the cited registration, we find this definition indicates that THE TASTE OF PARADISE evokes their delicious flavor. Given this meaning, which at worst is only somewhat suggestive of a characteristic or feature of the identified goods, the term appears to be inherently distinctive. The inherent distinctiveness of the mark in the cited registration is further evidenced by its registration on the Principal Register without a claim of acquired distinctiveness

⁷ There is little, if any, evidence of record regarding the commercial strength of the cited mark. In an *ex parte* appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 120 USPQ2d 1504, 1512 (TTAB 2016). For that reason, “in an *ex parte* analysis of the *du Pont* factors for determining likelihood of confusion ..., the ‘[commercial strength] of the mark’ ... is normally treated as neutral when no evidence as to [marketplace recognition] ... has been provided.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1207.01(d)(ix) (Oct. 2018). Thus, because there is no evidence of record regarding the commercial strength of the cited mark, this consideration is neutral.

⁸ Definitions retrieved from merriam-webster.com on October 9, 2017.

under Section 2(f) of the Trademark Act. *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), provides that a certificate of registration on the Principal Register shall be prima facie evidence of the validity of the registration, of the registrant's ownership of the mark and its exclusive right to use the mark in connection with the goods or services identified in the certificate.

We next consider Applicant's argument concerning the number and nature of third-party registrations of TASTE OF PARADISE formative marks. In support of its position, Applicant introduced into the record with the April 3, 2018 response to Office action, TSDR 13-22, copies of 8 registrations owned by 7 different entities, retrieved from a search of the USPTO's Trademark Electronic Search System ("TESS") database of applications and registrations that consist of or include the wording TASTE OF PARADISE.⁹ All marks are in standard character unless otherwise noted:

Reg. No. 1360907 for the mark TASTE OF PARADISE identifying "fresh fruits and vegetables namely, avocados, pineapple, mangos, papaya, coconuts, limes, environmentally grown tomatoes, cucumbers and kiwifruit;"

Reg. Nos. 3418023 and 3539448, owned by the same entity for the mark TASTE OF PARADISE identifying various travel agency services and vacation real estate services;

Reg. No. 2813646 for the mark THE TASTE OF PARADISE identifying "natural spring and artesian water for drinking;"

Reg. No. 3453374 for the mark A TASTE OF PARADISE! identifying "coconut oil; olive oil; palm oil;"

⁹ At 16-33.

Reg. No. 4155808 for the mark A TASTE OF PARADISE identifying a Christian cooking show;

Reg. No. 4612084 for the mark DELIVERING THE DELICIOUS TASTE OF PARADISE 24/7 identifying “import services, namely, arranging for the transportation of the merchandise of others in the nature of fresh fruits and vegetables;” and “providing a website featuring information and recipes in the field of food;” and

Reg. No. 5358580 for the mark A TASTE OF PARADISE COCONUT KENNY’S PIZZA SANDWICHES PREMIUM BREW and design identifying “pizza parlors; restaurant; restaurant and bar services; restaurant services; restaurant services featuring sandwiches.”

With regard to the third-party registration evidence, we note that the “existence of [third party] registrations is not evidence of what happens in the market place or that customers are familiar with them.” *AMF Inc. v. American Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973). Nevertheless, in determining the degree of weakness, if any, in the shared term, we must “adequately account for the apparent force of [third-party use] evidence,” regardless of whether “specifics” pertaining to the extent and impact of such use have been proven. *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-5 (Fed. Cir. 2015). “[E]xtensive evidence of third-party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established.” *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015), citing to *Juice Generation*, 115 USPQ2d at 1674.

In this case, one of the eight third-party registrations, Reg. No. 5358580, includes additional terms and a design that are wholly unlike any term in either the

cited mark or the applied-for mark. In addition, two of the third-party registrations, owned by the same entity, recite travel related services, while others recite a Christian cooking show, restaurant services, and a variety of food and drink items. None recites the goods, namely, processed macadamia nuts, identified in the cited registration. *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (disregarding third-party registrations for goods where the proffering party “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, ... support a finding that registrants’ marks are weak with respect to the goods identified in their registrations”); accord *Hunt Foods & Indus., Inc. v. Gerson Stewart Corp.*, 367 F.2d 431, 151 USPQ 350, 353 (C.C.P.A. 1966). This evidence falls somewhat short of supporting Applicant’s contention that the weakness of THE TASTE OF PARADISE will cause consumers to distinguish between the marks based upon the “vast abundance of marks containing the phrase.”¹⁰ *Cf. In re FabFitFun, Inc.*, 127 USPQ2d at 1675 (evidence of both third-party registration and use established that the shared term in the marks at issue is suggestive of the goods and commercially weak).

Based on the totality of the evidence, we find that the shared wording TASTE OF PARADISE has not been shown to be particularly weak. We find, as a result, that the mark in the cited registration is entitled to an ordinary scope of protection to be afforded an inherently distinctive mark. On balance, we do not believe that, on this

¹⁰ Applicant’s brief, 7 TTABVUE 15.

record, the relative strength of the cited mark weighs significantly one way or the other.

D. Conclusion

When we consider the record and the relevant likelihood of confusion factors, and all of Applicant's arguments relating thereto, including those arguments not specifically addressed herein, we conclude that consumers familiar with the goods offered under the mark in the cited registration would be likely to believe, upon encountering the related goods under Applicant's mark, that the goods originated with or are associated with or sponsored by the same entity.

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