

This Opinion is not a
Precedent of the TTAB

Mailed: July 15, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Triunfo Foods Import & Export Corp.
—

Serial No. 87684166
—

Michael F. Snyder of Volpe and Koenig PC,
for Triunfo Foods Import & Export Corp.

Tiffany Y. Chiang, Trademark Examining Attorney, Law Office 113,
Myriah Habeeb, Managing Attorney.

—
Before Cataldo, Goodman and Heasley,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Triunfo Foods Import & Export Corp (“Applicant”) seeks registration on the Principal Register of the mark LA PETITE BAKERY (in standard characters, “bakery” disclaimed) for “bakery goods; breads” in International Class 30.¹

¹ Application Serial No. 87684166 was filed on November 14, 2017, based upon Applicant’s assertion of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The English translation of “LA PETITE” in the mark is “the little.”

Page references to the application record refer to the online page numbers of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system.

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 likelihood of confusion with the registered mark LA PETITE FOODS (standard characters, "foods" disclaimed) for "ice cream, ice cream truffles, frozen confections."²

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We reverse the refusal to register.

I. Likelihood of Confusion

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, mistake, or deception. 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*"). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by

² Registration No. 3554620; renewed. "The English translation of 'LA PETITE' is THE LITTLE or THE SMALL." During the pendency of the proceeding a Section 8/9 affidavit was filed deleting the following identified goods: "candy, chocolate, chocolate truffles and cookies."

§ 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Goods, Channels of Trade and Classes of Purchasers

We first consider the second and third *DuPont* factors. The second *DuPont* factor “considers “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” while the third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). Our analysis under these factors is based on the identifications of goods in the application and the cited registration. *Id.*; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014).

Applicant argues that the goods are unrelated because they are “not identical,” “fundamentally different,” “unrelated in a meaningful way to consumers,” and “intended for different purposes.” 15 TTABVUE 17-18.

However, in analyzing the second *DuPont* factor it is not necessary that the goods of Applicant and Registrant be similar or even competitive to support a holding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate from, or are associated with, the same source. *Coach Servs. Inc. v. Triumph*

Learning, LLC, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). In addition, “it is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)).

Applicant’s goods are “bakery goods; breads” and Registrant’s goods are “ice cream, ice cream truffles, frozen confections.”

The Examining Attorney has submitted third-party registrations to show the relatedness of certain of the identified goods. Among the most pertinent are Registration Nos. 4049148, 4297636, 5020027, 5267871, 5274764, 5338380, 5450207, and 5470103, which cover, among other things, bakery goods or bakery products and ice cream or frozen confections.³ Third-party registrations that individually cover a number of different items and are based on use in commerce serve to suggest that the listed goods are of a type that may emanate from a single source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-1786 (TTAB 1993).

The Examining Attorney also submitted pages from third-party websites that offer ice cream and bakery products to show relatedness, a Wikipedia.com entry “list

³ March 1, 2019 Denial of Reconsideration at TSDR 84, 87, 91-93, 100, 102, 115-117, 118-120, 121-123, 124-126; August 14, 2018 Office Action at TSDR 89-91 and January 23, 2018 Office Action at TSDR 21-23.

of baked goods” which lists baked goods by type,⁴ as well as dictionary definitions for the terms “bakery”⁵ and “food.”⁶

The evidence establishes that Applicant’s and Registrant’s goods may emanate from a common source. We find this evidence sufficient to establish the relatedness of the goods.

As to trade channels, in the absence of a restriction in Applicant’s identification of goods and in the identification of goods in the cited registration, we must assume that the goods travel in “the normal and usual channels of trade and methods of distribution.” *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002).

The Internet evidence discussed above shows that ice cream and bakery goods are marketed in the same channels of trade to the same ordinary purchasers of bakery products, ice cream and frozen confections, and therefore, we conclude that the channels of trade and purchasers would at least overlap.

The relatedness of the goods and channels of trade favor a finding of likelihood of confusion.

⁴ August 14, 2018 Office Action at TSDR 5-7, Wikipedia.com.

⁵ Bakery is defined as “a place where products such as bread, cake and pastries are baked or sold.” The American Heritage Dictionary of the English Language (2018), ahdictionary.com. January 23, 2018 Office Action at TSDR 5.

⁶ Food is defined as “any nutritious substance that people or animals eat or drink.” Oxford Living Dictionary, oxforddictionaries.com. January 23, 2018 Office Action at TSDR 6.

B. Similarity or Dissimilarity of the Marks and Strength of Cited Mark

We next turn to the first *DuPont* factor, which requires us to determine the similarity or dissimilarity of the marks when viewed in their entireties in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). The test, under the first *DuPont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result.

Applicant's mark is LA PETITE BAKERY ("bakery" disclaimed) and Registrant's mark is LA PETITE FOODS ("foods" disclaimed). "La Petite" in both marks means "the small."⁷ As indicated, the Examining Attorney also submitted definitions of "bakery" and "food." *See* nn. 5-6.

Applicant argues that the marks are visually and aurally different due to different additional terms found in each mark. 15 TTABVUE 14-15. Applicant points out that its mark is six syllables while Registrant's mark is three syllables. 15 TTABVUE 14. Applicant argues that the use of the term "bakery" in connection with the goods designates items made in a bakery, creating a different commercial impression from

⁷ As noted, the respective application and registration for each mark provides a translation of "la petite" as "the small." In addition, the Examining Attorney also submitted a translation for "la petite" which means "the small." Collins French/English Translator, collinsdictionary.com/translator. January 23, 2018 Office Action at TSDR 14.

Registrant's mark. 15 TTABVUE 15. Applicant submits that the Examining Attorney did not consider the marks in their entireties and ignored the distinct meanings of each mark which create different commercial impressions. 15 TTABVUE 16.

We acknowledge the specific differences in sound, appearance and meaning pointed out by Applicant due to the different second terms in each mark. However, in reaching a conclusion on the issue of likelihood of confusion, 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. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004); *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We observe that Applicant's applied-for mark is similar in construction to the cited mark. Although there are differences in the number of syllables, each mark is composed of three words, beginning with the same terms LA PETITE followed by a descriptive word which is disclaimed. LA PETITE is the dominant element in both Applicant's and Registrant's marks due to the disclaimers of "bakery" in Applicant's mark and "foods" in Registrant's mark. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (disclaimed matter generally will not constitute the dominant part of a mark) (quoting *In re Nat'l Data Corp.*, 224 USPQ at 752).

Applicant's and Registrant's marks have similarities in sound, appearance, meaning and commercial impression created by the identical shared terms LA

PETITE. It is well-established that prospective consumers are often more inclined to focus on the first word, prefix or syllable in any trademark or service mark. *See Palm Bay*, 73 USPQ2d at 1692; *Presto Products, Inc. v. Nice Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered” when making purchasing decisions).

When we compare LA PETITE BAKERY and LA PETITE FOODS in their entirety, and give greater weight to the dominant elements, we conclude that the marks in their entirety are more similar than dissimilar. While admittedly there are differences in the marks, as discussed above, the terms LA PETITE in both marks contribute to their overall similarity and outweigh any differences.

Notwithstanding the foregoing, when we consider the evidence submitted by Applicant of third-party registrations, we find that the term PETITE/PETIT⁸ is relatively weak and entitled to a narrow scope of protection as applied to the involved goods.⁹

⁸ We take judicial notice that “petit” and “petite” are respectively, the French masculine and feminine forms for “small”; that “le” and “la” are respectively, the French masculine and feminine forms for the definite article “the”; and that “le petit” and “la petite” are respectively, the French masculine and feminine forms for “the small.” Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/french-english/petit>; <https://dictionary.cambridge.org/dictionary/french-english/le> (accessed July 8, 2020).

The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

⁹ We note that LA which is translated as the definite article “the,” *see* n.8, has no source indicating significance. *See In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (“[T]he definite article THE ... add[s] no source- indicating significance to the mark as a whole.”); *In*

Third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (internal quotation marks omitted). *See also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (“[T]hird-party registrations are relevant evidence of the inherent or conceptual strength of a mark or term because they are probative of how terms are used in connection with the goods or services identified in the registrations.”). *See also In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. App’x (Fed. Cir. 2019). (“In determining the degree of weakness, if any, in the shared terms, we must ‘adequately account for the apparent force of [third-party use and registration] evidence,’ regardless of whether ‘specifics’ pertaining to the extent and impact of such use have been proven.”).

The record includes third-party registrations submitted by Applicant on reconsideration “showing various third party registrations with marks containing the term “PETIT” [or PETITE] for many food products.” February 14, 2019 Request for Reconsideration at TSDR 1. Applicant also submitted third-party registrations

re Central Soya Co., Inc., 220 USPQ 914, 916 (TTAB 1984) (“‘La,’ which means ‘The,’ cannot be said to have any distinguishing effect.”).

containing the term LA PETITE during prosecution. July 23, 2018 Response to Office Action at TSDR 17-47. Applicant argues that numerous LA PETITE marks coexist on the Principal Register and that “the differences in those marks are commensurate with the differences between Applicant’s Mark and the Cited Registration,” allowing the marks to coexist. 15 TTABVUE 12.

Of the third-party registrations submitted by Applicant, we do not consider those registrations that were not registered based on use in commerce.¹⁰ We also have not considered those LA PETITE third-party registrations for which there is no evidence or explanation of relatedness of the goods or services, which includes those registrations that cover wine, baby lotion, bath and body products, and swimming instruction. *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration). Those registrations are not listed in the table below.

On the other hand, there is evidence in the record that shows that various bakery goods, candies, chocolate, ice cream and frozen confections are related. January 23, 2018 Office Action at TSDR 7-37; August 14, 2018 Office Action at TSDR 11-96. We consider this evidence when analyzing the third-party registrations for food items submitted by Applicant that contain the terms PETITE or PETIT or the terms LA

¹⁰ Registrations issued under Sections 44(e) or 66(a) do not demonstrate exposure of the mark prior to registration through use in commerce and, therefore, have no probative value. *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, 100 USPQ2d 1213, 1221 (TTAB 2011); *In re Princeton Tectonics, Inc.*, 95 USPQ2d 1509, 1511 (TTAB 2010).

PETITE or LE PETIT. As indicated in the table, some of the third-party registrations are owned by the same entity.

Registration No.	Mark	Goods	Owner
Reg. No. 5465300 ¹¹		bread, croissants and sweet bakery goods	La Petite Bretonne Inc.
Reg. No. 3688962 ¹²	La Petite Bretonne	bread, croissants, small cakes, buns, muffins, swirl pastries, pies, pitas, and cookies	La Petite Bretonne Inc.
Reg. No. 4217852 ¹³	La Petite Reine	Cheese, dairy products excluding ice cream, ice milk and frozen yogurt	Epicure Foods Corporation
Reg. No. 3650474 ¹⁴	Le Petite Beurre	cookies	Generale Biscuit
Reg. No. 3227180 ¹⁵	Le Petite Beurre	cakes, ... pastries, ... frozen yogurt, ... bread	Generale Biscuit

¹¹ February 14, 2019 Request for Reconsideration at TSDR 52; July 23, 2018 Response to Office Action at TSDR 44-45.

¹² February 14, 2019 Request for Reconsideration at TSDR 34.

¹³ July 23, 2018 Response to Office Action at TSDR 33.

¹⁴ February 14, 2019 Request for Reconsideration at TSDR 33.

¹⁵ February 14, 2019 Request for Reconsideration at TSDR 28.

Registration No.	Mark	Goods	Owner
Reg. No. 2429354 ¹⁶	Le Petit Ecolier	biscuits, cakes and cookies	Generale Biscuit
Reg. No. 5606982 ¹⁷	Le Petit Outre	breads, pastries	Great Northern Bakehouse
Reg. No. 4999233 ¹⁸		bread	Premier Can-Am Corp.
Reg. No. 2713116 ¹⁹	Petite Palmiers	baked goods, namely cookies	Ly Brothers Corporation
Reg. No. 1664296 ²⁰	Petite Feet	Candy shaped in the form of a foot	Mark Wolpa
Reg. No. 3502134 ²¹	Petite Cuisine	won tons filled with beef, chicken, pork, seafood, fruits, vegetables or cheese	Windsor Quality Food Company Inc.
Reg. No. 1299747 ²²	Petitcups	candy	Kencraft Inc.

¹⁶ February 14, 2019 Request for Reconsideration at TSDR 25.

¹⁷ February 14, 2019 Request for Reconsideration at TSDR 53.

¹⁸ February 14, 2019 Request for Reconsideration at TSDR 45.

¹⁹ February 14, 2019 Request for Reconsideration at TSDR 26.

²⁰ February 14, 2019 Request for Reconsideration at TSDR 23.

²¹ February 14, 2019 Request for Reconsideration at TSDR 30.

²² February 14, 2019 Request for Reconsideration at TSDR 22.

Registration No.	Mark	Goods	Owner
Reg. No. 5182597 ²³	Petit Egg	breakfast burritos, quiche, sandwiches, namely breakfast egg sandwich	Beanery of Alameda Inc.
Reg. No. 2717852 ²⁴	Petite Deceit	candy	Chipurnoi Incorporated
Reg No. 3619947 ²⁵	Petite Tresors	sweet bakery products cakes, cookies madeleines, chocolate candy, chocolate truffles, candy, chocolate	Route 40 Ventures
Reg. No. 3982926 ²⁶	Sweet Petite Confections	bakery desserts, candy desserts, desserts, namely chocolates, candy truffles, cupcakes, pastries, cookies and ice creams	Michelle I. Lomelin
Reg. No. 1757072 ²⁷	Nancy's Petite Quiche	quiche	Nancy's Specialty Foods

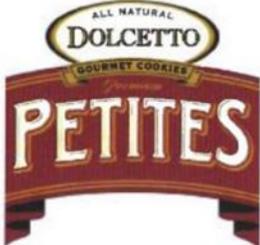
²³ February 14, 2019 Request for Reconsideration at TSDR 47.

²⁴ February 14, 2019 Request for Reconsideration at TSDR 27.

²⁵ February 14, 2019 Request for Reconsideration at TSDR 32.

²⁶ February 14, 2019 Request for Reconsideration at TSDR 35.

²⁷ February 14, 2019 Request for Reconsideration at TSDR 24.

Registration No.	Mark	Goods	Owner
Reg. No. 4370742 ²⁸	 (All Natural Dolcetto Gourmet Cookies Petites and design)	cookies and crackers ...	Fusion Gourmet Inc.
Reg. No. 4409445 ²⁹	Petit	candy	Hint Mint Inc.

The number of third-party registered marks owned by different entities indicates that PETITE or PETIT is highly suggestive as applied to food items including bakery products, bread, candy, and chocolates. We can surmise that the word PETITE or PETIT in this context alludes to the size of the food item or the retail store purveying them. Based on this evidence, we find that Applicant has established that PETITE or PETIT is so highly suggestive of food items that the public will look to other elements to distinguish the source of the goods. *See Juice Generation*, 115 USPQ2d at 1674-75. The evidence supports a finding that PETITE is weak and weighs against a finding of likelihood of confusion based on the marks.

²⁸ February 14, 2019 Request for Reconsideration at TSDR 39.

²⁹ February 14, 2019 Request for Reconsideration at TSDR 40.

II. Conclusion

While we have found the relatedness of the goods and the channels of trade favor a finding of likelihood of confusion, the similarity between the marks is not enough for us to find a likelihood of confusion, because the shared term PETITE is so weak. Therefore, the addition of the word BAKERY in Applicant's mark is sufficient to distinguish it from the cited mark, even though the distinguishing portions of both Applicant's and Registrant's marks have been disclaimed. *See In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986).

Decision: The refusal to register Applicant's mark LA PETITE BAKERY is reversed.