

This Opinion is not a
Precedent of the TTAB

Mailed: October 16, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re S.I. Consulting Ltd.
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Serial No. 87821370
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Scott R. Kaspar of Kaspar Law Company, LLC,
for S.I. Consulting Ltd.

Mark S. Tratos, Trademark Examining Attorney, Law Office 113,
Myriah Habeeb, Managing Attorney.

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Before Taylor, Adlin and Goodman,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

S.I. Consulting Ltd. (“Applicant”) seeks registration on the Principal Register of
the mark SIELLA’S (in standard characters) for

“Skin care products, namely, face moisturizer, face cream,
anti-aging cream, acne cream in the nature of organic
herbal cream cleanser not for medical purposes, night
cream, face oil, eye cream, hand cream” in International
Class 3.¹

¹ Application Serial No. 87821370 was filed on March 5, 2018, based upon Applicant’s allegation 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). An amendment to allege use was filed on March 19, 2018, claiming a date of first use and first use in commerce of March 15, 2018. The

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 that it is likely to cause confusion with the registered mark CIELA (in standard characters)² for the following International Class 3 goods:

Cosmetics; Make-up; Make-up for the face and body; Make-up pencils; Make-up removing lotions; Make-up sets; Skin care preparation, namely, body polish; Skin care preparations, namely, body balm; Skin care preparations, namely, skin peels; Skin care products, namely, non-medicated skin serum; Compacts containing make-up; Cosmetic creams for skin care; Cosmetic preparations for skin care; Cosmetic products in the form of aerosols for skin care; Cosmetics and make-up; Eyes make-up; Foundation make-up; Hand masks for skin care; Non-medicated skin care creams and lotions; Non-medicated skin care preparation, namely, body mist; Non-medicated skin care preparations; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Wrinkle removing skin care preparations.

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 affirm the refusal to register.

I. Likelihood of Confusion

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 likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567

amendment to allege use was accepted on June 19, 2018. Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVue docket system.

² Registration No. 5308108, issued October 10, 2017.

(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, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). These factors, and the other relevant *DuPont* factors now before us, are discussed below. *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.”)); *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.”).

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

We begin with the similarity or dissimilarity of the goods, channels of trade and classes of purchasers. We must make our determinations under these factors based on the goods as they are recited in the application and cited registration. *See Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“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 sales of the goods are directed.”); *Paula Payne Products Company v. Johnson Publishing Company, Inc.*, 177 USPQ 76, 77 (CCPA 1973).

Applicant’s face cream, anti-aging cream, acne cream in the nature of organic herbal cream cleanser not for medical purposes, night cream, eye cream, and hand cream are encompassed by and legally identical to Registrant’s “Non-medicated skin care creams and lotions,” and “Non-medicated skin care preparations.”³ See e.g., *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.’”). It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the recitation of goods in a particular class. *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). Applicant has not disputed the relatedness of the goods.

Because the goods are legally identical in part, and because there are no limitations as to channels of trade or classes of purchasers in the application and cited registration, we must presume that the legally identical goods will be sold in the same channels of trade and will be bought by the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the

³ The Examining Attorney also submitted dictionary definitions of “preparation,” an encyclopedia entry that discussed skin care preparations, web pages discussing skin care preparations and skin care products, web pages of companies that offer various skin care products, and third-party registrations that cover skin care preparations and moisturizers or acne creams. June 18, 2018 Office Action at TSDR 5-19, 28-39; August 07, 2018 Office Action at TSDR 19-40; February 27, 2019 Denial of Reconsideration at TSDR 2-38.

Board was entitled to rely on this legal presumption in determining likelihood of confusion); *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); *See also Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003).

In view of the above, the *DuPont* factors of the similarity of the goods, the channels of trade, and classes of purchasers strongly favor a finding of likelihood of confusion.

B. Similarity or Dissimilarity of the marks

We now consider the similarities and dissimilarities between Applicant's mark SIELLA'S and Registrant's mark CIELA. We must compare the marks in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1690 (Fed. Cir. 2005) (quoting *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, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd*, Slip Op. No. 18-2236 (Fed. Cir. Sept. 13, 2019) (mem) (citing *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.") (citation omitted).

"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) (citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). When trademarks would appear on virtually identical goods, as is the case here, “the degree of similarity necessary to support a conclusion of likely confusion declines.” *See Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

Applicant argues that the marks are different in appearance because Registrant’s mark begins with the letter “C” and ends with the letter “A” and Applicant’s mark begins with the letter “S,” and ends with the letter “S.” Applicant submits that the apostrophe is a meaningful distinction between two marks, and that the overlap of three common letters “I,” “E,” and “L” that appear in the middle of each mark are not sufficient to find the marks similar in appearance.

As Applicant acknowledges, the parties’ marks are visually similar because they both contain the vowels and letters IELA/IELLA in the same order and combination. We find that the difference in the lead letters “C” and “S,” the use of a single letter “L” versus a double letter “L,” and the presence of an apostrophe and letter “S” in Applicant’s mark does little to distinguish the marks’ appearance. *See e.g., In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (“The absence of the possessive form in

applicant's mark BINION has little, if any, significance for consumers in distinguishing it from the cited mark.") (internal citations omitted). We find that visually the marks are very similar.

As to sound, the Examining Attorney submitted evidence that the letter "C" is pronounced the same as the letter "S" when it precedes the letters "I," "E" and "Y," as it does here, in both marks. (August 7, 2018 Office Action at TSDR 10. *See also* June 18, 2018 Office Action at TSDR 22). Additionally, the Examining Attorney submitted evidence that "Ciela" and "Siella" are both pronounced "See ella." (June 18, 2018 Office Action at TSDR 24). Although there is no correct pronunciation of a trademark, *see In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227, 227 (CCPA 1969), we therefore find it likely that the marks would be pronounced similarly, even with the double "L" and addition of the apostrophe and letter "S" in Applicant's mark.⁴ We find the marks are similar in sound.

As to connotation, Applicant submits that CIELA is a reference to sky as it is similar to "cielo," the Spanish word for sky, while its mark SIELLA'S is a reference to the daughter of Applicant's owner whose name is Siella. As to commercial impression, Applicant argues that CIELA "provoke[s] consumers to associate the registered mark with 'cielo' and the beauty and purity of [Montana] the Big Sky

⁴ Applicant argues that Registrant's mark is pronounced in a manner similar to the Spanish word "cielo," while its mark is pronounced "si – elle – las." (8 TTABVUE 9). Even if all consumers pronounced the marks as Applicant suggests, they would be more similar to dissimilar in sound.

State,” which is where Registrant is located, while SIELLA’S is a reference to Applicant’s owner’s daughter. (8 TTABVUE 9).

There is evidence in the record that “Ciela” and the alternate spelling “Siella” is a female first name, or given name, and that the name means “heavenly.” (June 18, 2018 Office Action at TSDR 24; August 7, 2018 at TSDR 13-15, 18). In fact, the English translation of “cielo” is either sky or heaven. (June 18, 2018 Office Action at 20). Since “cielo” can mean sky or heaven, and CIELA/SIELLA means “heavenly,” the marks have similar connotations and commercial impressions. (June 18, 2018 Office Action at TSDR 23-26; August 7, 2018 at TSDR 13-15).

Given the similarities in sound, appearance, and connotation, we find the marks in their entireties engender similar commercial impressions. This *DuPont* factor also favors a finding of likelihood of confusion.

II. Conclusion

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. We conclude that confusion is likely to occur between Applicant’s mark and Registrant’s mark.

Decision: The refusal to register Applicant’s mark SIELLA’S is affirmed.