

**This Opinion is Not a
Precedent of the TTAB**

Mailed: August 19, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Minted, LLC

Serial No. 88031150

Meredith M. Wilkes of Jones Day,
for Minted, LLC.

Edward Payabyab, Trademark Examining Attorney, Law Office 128,
Travis Wheatley, Managing Attorney.

Before Cataldo, Wellington and Greenbaum,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Minted, LLC (“Applicant”) seeks registration on the Principal Register of the mark
PIPPA (in standard characters) for

Paper products, namely, stationery, envelopes, printed
invitations, announcement cards, note cards, and greeting
cards, in International Class 16.¹

¹ Application Serial No. 88031150 was filed on July 10, 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) of the Trademark Act.

The Trademark Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used on or in connection with the identified goods, so resembles the registered mark PIPPA & CO. (in standard characters, "& CO." disclaimed) for "Retail store services in the field of party supplies" in International Class 35, as to be likely to cause confusion, mistake or deception.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 affirm the refusal to register.

I. Evidentiary Issue

We sustain the Examining Attorney's objection to Applicant's evidence of a screenshot of Registrant's website, submitted for the first time with Applicant's Brief, and references thereto in the brief.³ Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (record "should be complete prior to the filing of an appeal"). *See In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (new evidence submitted with brief is "untimely and therefore not part of the record for this case"); *see also In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018), *aff'd without decision*, 777 Fed. Appx. 616 (unpublished).

² Registration No. 4675414 issued on January 20, 2015.

³ This screenshot is different from other screenshots of Registrant's website that Applicant made of record during prosecution. April 30, 2019 Response to Office Action, TSDR at 9-13, 26; November 22, 2019 Request for Reconsideration, TSDR at 114-116.

The Examining Attorney points out (but does not object to) procedural irregularities in Applicant's brief, where Applicant provided parenthetical definitions of the word "party" as meaning "a social gathering" from the online MERRIAM-WEBSTER and CAMBRIDGE DICTIONARY, for which Applicant only provided associated website addresses embedded within Applicant's arguments. 9 TTABVue 9. The Board may take judicial notice of dictionary definitions including online dictionaries which exist in printed format or that have regular fixed editions. *See In re White Jasmine*, 106 USPQ2d 1158, 1160 n.1 (TTAB 2013). We do so here. Nonetheless, we remind Applicant that the better practice is to ensure that relevant definitions are included in the record prior to appeal to allow the Examining Attorney the opportunity to object, and that merely providing links to content on the Internet is insufficient to introduce the websites or underlying material into evidence. *See In re Olin*, 124 USPQ2d 1327, 1331 n.15 (TTAB 2017) (citing *In re Powermat Inc.*, 105 USPQ2d 1789, 1791 (TTAB 2013)). On the other hand, we have not considered the definition from THE FREE DICTIONARY BY FARLEX, because it is an online dictionary that does not exist in printed format or have regular fixed editions (*cf. White Jasmine*, 106 USPQ2d at 1160 n.1), and Applicant did not make it of record during the prosecution of the application.⁴ *See generally* TRADEMARK BOARD MANUAL OF PROCEDURE ("TBMP") § 1208.03 (2020).

⁴ We add that although none of the definitions proffered by Applicant include "invited guests," and Applicant submitted the definitions to make that point, neither do they influence our decision because (1) the identified goods are not limited to "printed invitations," and (2) parties may include invited and uninvited guests. In addition, the definition from THE FREE DICTIONARY BY FARLEX is quite similar to the other two definitions.

II. Likelihood of Confusion

Our determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). 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 any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the relatedness of the goods and services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (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 [or services] and differences in the marks.”).

A. Similarity or Dissimilarity of the Marks

We begin by comparing Applicant’s mark PIPPA and Registrant’s mark PIPPA & CO., both in standard characters, in their entirety for similarities and dissimilarities in appearance, sound, connotation and overall commercial impression. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018). When considered in their entirety, we find the marks to be nearly identical due to the shared term PIPPA, and Applicant does not contend otherwise. There is no

evidence that PIPPA has any meaning or significance when applied to the identified goods and services, and there is no evidence of use by third parties of similar marks on similar goods and services that might dilute the source-identifying capacity of PIPPA for those goods and services. On the other hand, the appropriately disclaimed term “& CO.” in Registrant’s mark has little, if any, source identifying capacity, as the ampersand simply serves as a conjunction joining PIPPA and CO., and the term CO. “merely describe[s] the business form of the entity that owns the mark[.]” *Detroit Athletic Co.*, 128 USPQ2d at 1049. *See Goodyear’s Rubber Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602-03 (1888) (adding generic business entity name such as “company” or “Inc.” usually does not distinguish otherwise confusingly similar marks). Thus, we do not ignore this term, but we do give it little weight.

The near identity of the marks weighs heavily in favor of likelihood of confusion.

B. Similarity or Dissimilarity of the Goods and Services and Channels of Trade

With regard to the goods and services and their channels of trade, we must make our determinations under these factors based on the goods and services as they are identified in the application and cited registration. *See Detroit Athletic Co.*, 128 USPQ2d at 1052; *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *see also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). For this reason, Applicant’s arguments concerning Registrant’s actual use of the cited registered mark on the identified services, and Registrant’s ownership of another registration for another mark for different services, are not relevant. 4 TTABVUE 8.

1. Similarity or Dissimilarity of Identified Goods and Services

Applicant contends that the goods and services are distinguishable, and that “[t]he Cited mark **only** covers ‘retail store services,’ not the goods sold in connection therewith.” *Id.* (emphasis in original). However, the goods and services do not have to be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010); *In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1368 (TTAB 2009). The respective goods and services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that goods emanate from the same source.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (citation omitted). *See also In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991).

We also bear in mind that where, as here, essentially identical marks are involved, the relationship between the goods and services need not be as close as may be required with less similar marks to support a finding of likelihood of confusion. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688-1689 (Fed. Cir. 1993) (“even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source”). In addition, the Examining Attorney need not prove likelihood of confusion with respect to each item of goods or services identified in the application and registration; if there is a likelihood of confusion as to any of Applicant’s identified goods, the refusal of

registration must be affirmed for the entire class of goods. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

To recap, the goods identified in the application are “paper products, namely, stationery, envelopes, printed invitations, announcement cards, note cards, and greeting cards,” and the services identified in the cited registration are “retail store services in the field of party supplies.” It is well recognized that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other. *See, e.g., In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (holding BIGG’S (stylized) for retail grocery and general merchandise store services and BIGGS and design for furniture likely to cause confusion). We find that to be the case here.

Contrary to Applicant’s argument mentioned above, the identified goods and services are closely related on their face in that the “party supplies” offered in Registrant’s retail stores include items used in connection with planning, hosting and attending a party, such as the “printed invitations,” “announcement cards,” “note cards” and “greeting cards” listed in the application. This finding is supported by third-party website excerpts printouts from retail party supply stores such as Party City, Party Depot, Shindigz, Birthday Express, Ultimate Party Store, Sandy’s Party Supply and SGS Paper Co., all of which offer invitations and other paper products of the type identified in the application, and a host of other party supplies such as balloons, decorations, gift wrap and party favors. October 31, 2018 Office Action, TSDR 8-11, 14-19.

The Examining Attorney also submitted third-party website excerpts from companies such as Papyrus, American Greetings, Sugar Paper, Rifle Paper Company, Paper Source and Meri Meri, showing that a single entity manufactures paper products of the type identified in the application and other types of party supplies, such as party gifts, confetti, decorations and balloons, and also commonly sells the foregoing through its own retail stores under a single mark, sometimes under the heading “party” or “party supplies.” May 23, 2019 Final Office Action, TSDR 4-4-20, 25-27 and 30-32.

This evidence is not from “big box” retail stores or online retailers who sell a wide variety of goods, but rather from specialty party supply and paper goods retailers, and thus it is highly probative of the close relationship between the identified goods and services. *See In re Ox Paperboard, LLC*, 2020 USPQ2d 10878 at *6 (TTAB 2020). Collectively, this evidence demonstrates consumer exposure to the same source using the same mark for goods like those identified in the application and services like those identified in the registration. *See, e.g., In re C.H. Hanson Co.*, 115 USPQ2d 1351, 1355-56 (TTAB 2015); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009).

Applicant points to several pairs of registrations for retail store services and “goods that may be purchased through those retail services” where, in each instance, the marks share a common element, as evidence that confusion is unlikely here. 4 TTABVUE 11. This evidence has little probative value because none of the pairs cover the types of goods and services identified in the application and registration.

Moreover, many reasons to which we are not privy may explain the coexistence of these pairs of third-party registrations, such as the inherent weakness or the commercial weakness of the shared term, which could limit the scope of protection of the prior co-existing registrations.⁵ “Applicant’s attempt to equate those co-existing registrations, for each of those marks, with the situation herein is not persuasive. Suffice it to say that each case must be decided on its own set of facts.” *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2010); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1087 (Fed. Cir. 2014) (“[E]ach case must be decided on its own facts and the differences are often subtle ones.”). Further, we are not bound by the allowance of prior registrations, even if they have some characteristics that may appear relevant to this case. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Finally, we reject as overly narrow Applicant’s argument that “party supplies are generally viewed as materials needed to host a party, such as decorations, and not paper invitations that may or may not have even been sent in the digital age.” 4 TTABVUE 8. Based on the ample evidence of record, and a plain reading of the identifications of goods and services, we find that consumers would believe that the goods identified in the application (which are not limited to paper invitations) are closely related to the services identified in the registration, and that they may

⁵ As mentioned above, there is no evidence that the term PIPPA suffers from such weakness. None of the pairs of third-party registrations relied upon by Applicant include the term “PIPPA” or a formative thereof.

emanate from a common source when sold under similar marks.⁶ In short, the evidence belies Applicant's contentions that the Examining Attorney did not meet the burden of proof. 9 TTABVUE 10-11. *Cf. St. Helena Hosp.*, 113 USPQ2d at 1086-87.

2. Similarity or Dissimilarity of Trade Channels

"[I]n the absence of specific limitations," which are not present in these identifications, we must assume that the identified goods and services move through all normal and usual channels of trade for such goods and services and to all normal potential purchasers. *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1750 (Fed. Cir. 2017); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983). The trade channels for the goods identified in the application would include retail party supply stores as well as retail paper goods supply stores such as the retailers mentioned above. The relevant class of consumers for the identified goods and services also is the same, i.e., members of the general public. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (affirming Board finding that where the identification is unrestricted, "we must deem the goods to travel in all appropriate trade channels to all potential purchasers of such goods"); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). The relatedness evidence from the commercial websites listed above confirms that the paper goods identified in the application move in the same channels of trade and are offered to

⁶ Contrary to Applicant's assertions, 4 TTABVUE 8, the term "party supplies" in the registration is not indefinite, and thus there is no need for us to consider extrinsic evidence of Registrant's actual use to clarify the meaning of that term. *Cf. Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010) (Board considered extrinsic evidence of use to clarify the meaning of a technical, scientific term in the identification of goods, not to restrict or limit the goods).

the same classes of consumer as retail party supply stores. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012).

The legal presumptions and relatedness evidence, which also shows that the channels of trade and classes of consumers overlap, support a finding of likely confusion.

C. Conditions of Purchase

Next, we consider “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 177 USPQ at 567. Applicant argues that purchasers are very thoughtful and spend a great deal of time selecting appropriate cards and planning parties. While that might be true for some purchasers of the relevant goods, the paper products identified in the application and the party supplies featured in the retail stores identified in the cited registration are ubiquitous and likely will be bought by purchasers who will exercise different degrees of care during the purchasing process. We are bound to consider the least sophisticated consumer in the class. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014) (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”). Moreover, the marketplace evidence referenced above shows that printed products such as those identified in the application, and other types of party supplies (e.g., gift wrap, gift bags) that would be sold in retail party supply stores such as those identified in the cited registration, may be relatively inexpensive, often costing \$25 or less. For example, Party Depot offers invitation kits for \$24.99 and individual

invitations for under \$5.00 (October 31, 2018 Office Action, TSDR at 9-10), Papyrus offers many greeting cards between \$5.95 and \$7.95, and various gift bags and tissue paper between \$4.95 and \$7.95 (May 23, 2019 Final Office Action, TSDR at 10, 14), and Rifle Paper Co. offers wrapping sheets for \$8.95 (*id.*, TSDR at 24-26). “When products are relatively low-priced and subject to impulse buying, the likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000). Given the possibility of low price points for the identified goods and other types of party supplies offered in Registrant’s retail stores, we find consumers may be subject to impulse purchasing.

The purchasing conditions also favor a finding of likelihood of confusion.

III. Conclusion

In view of the virtually identical marks used on or in connection with closely related goods and services that move through overlapping channels of trade, and a lesser degree of purchasing care, confusion is likely between Registrant’s standard character mark PIPPA & CO. and Applicant’s standard character mark PIPPA.

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