

This Opinion is Not a
Precedent of the TTAB

Mailed: August 24, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re FGX International, Inc.
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Serial No. 88033162
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Kay Lyn Schwartz and Lisa R. Hemphill of Foley & Lardner, LLP,
for Applicant, FGX International, Inc.

Caitlin Watts-FitzGerald, Trademark Examining Attorney, Law Office 111,
Chris Doninger, Managing Attorney.
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Before Kuczma, Heasley and Dunn,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

FGX International, Inc. (Applicant) seeks registration on the Principal Register of
SUNSENTIALS (standard characters claimed) for:

Sunglasses; contact lenses; eyeglass and sunglass lenses;
eyewear; spectacles; eyeglasses; reading glasses; eyeglass
lenses; eyeglass frames; cases for eyeglasses, spectacles
and sunglasses; cords for spectacles, eyeglasses and
sunglasses; neck cords for spectacles, eyeglasses and

sunglasses; lanyards for spectacles, eyeglasses and sunglasses, in International Class 9.¹

Registration of Applicant's mark was refused under § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), due to a likelihood of confusion with the mark FUN SUN ESSENTIALS (standard characters claimed) in Registration No. 5005434 owned by My First Shades, Inc. (Registrant), registered for:

Sunglasses and component parts thereof and accessories, namely, earstems, nose pieces, foam strips, shields and lenses, in International Class 9.²

After the Examining Attorney made the refusal final, Applicant appealed to this Board and requested reconsideration of the refusal, which was denied. Applicant and the Examining Attorney submitted briefs and Applicant filed a reply brief. For the reasons set forth below, the refusal to register is affirmed.

I. Evidentiary Objection

Before proceeding to the merits of the refusal, we address an evidentiary matter. The Examining Attorney objects to Exhibit 1 to Applicant's Appeal Brief on the ground that it was untimely submitted.³ Exhibit 1 is a copy of the specimen of use Registrant filed with its application. Applicant argues:

This evidence is already in the full record of the file history of the Registrant. Applicant was merely using the evidence from the record, for ease of reference, to clarify the channel of trade and the relevant consumers to whom Registrant

¹ Application Serial No. 88033162 was filed on July 11, 2018, based upon Applicant's declared bona fide intention to use the mark, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

² Registration No. 5005434 issued July 26, 2016.

³ Examining Attorney's Appeal Brf., 9 TTABVUE 3.

targets to purchase its goods sold under the FUN SUN ESSENTIALS mark, which are very young consumers, even infants. Said target market creates a particular commercial impression for the mark, and Applicant was pointing out what is already in the record. Therefore, Applicant's EXHIBIT 1 should be considered because (1) the subject of the exhibit is already in the record; and (2) it has probative value in that it helps to establish the commercial impression created by the mark and the niche consumers targeted.⁴

The cases cited by Applicant in support of its submission of Registrant's specimen, i.e., Exhibit 1 to its Appeal Brief, involve evidence that was timely submitted during the examination of an application⁵, and so are inapplicable here, where Applicant seeks consideration of evidence that was not submitted until after the filing of its Request for Reconsideration and Notice of Appeal. If an applicant wishes to rely on matter in the file wrapper of a cited registration, it must timely make it of record during the prosecution of its application. The parts of the file wrapper of a cited registration are not made of record by virtue of the examining attorney attaching to an office action a printout detailing the particulars of the cited registration. *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1990-91 (TTAB 2011) (documents from file of cited registration submitted with applicant's appeal brief are late-filed and not considered; examining attorney's objection sustained); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") §§ 1203.02(e) and 1207.01 (June 2020).

⁴ Applicant's Reply Brief pp. 3 (12 TTABVUE 4).

⁵ See cases cited on pp. 2-3 of Applicant's Reply Brief (12 TTABVUE 3-4): *In re Hudson News Co.*, 39 USPQ2d 1915, 1920 n.10, 1924 n. 18 (TTAB 1996), *aff'd without opinion* (Fed. Cir. 1997); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1565 (TTAB 1996); *In re Berman Brothers Harlem Furniture Inc.*, 26 USPQ2d 1514, 1515 (TTAB 1993); *In re Murphy Door Bed Co.*, 223 USPQ 1030, 1032 n.9 (TTAB 1984).

The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal. If the applicant or the examining attorney desires to introduce additional evidence after an appeal is filed, the applicant or the examining attorney should submit a request to the Board to suspend the appeal and to remand the application for further examination. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). Inasmuch as Registrant's specimen was not properly made of record, it has not been considered.

II. Likelihood of Confusion

Our determination under § 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion enunciated in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), *cited in B&B Hardware, Inc. v. Hargis Indus., 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). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Ft. 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.").

We have considered all of the evidence as it pertains to the relevant *DuPont* factors, as well as Applicant's arguments (including any evidence and arguments not specifically discussed in this opinion). *DuPont*, 177 USPQ at 567-68; *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1800 (Fed. Cir. 2018) (not all of the *DuPont* factors are relevant to every case, only factors of significance to the particular mark need be considered).

A. Similarity of the Goods, Channels of Trade and Classes of Consumers

We first consider the *DuPont* factors involving the similarity of Applicant's and Registrant's goods, and their channels of trade and classes of customers. In determining the similarity of Applicant's and Registrant's goods, it is sufficient if likelihood of confusion for each class of goods is established for any item encompassed by the identification of goods for that class. *See In re Wacker Neuson SE*, 97 USPQ2d 1408, 1409 (TTAB 2010) (citing *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)). Inasmuch as Applicant's sunglasses and sunglass lenses are also found in Registrant's goods, the goods are in-part identical.

Absent any restrictions in an application or registration, identical goods are presumed to travel in the same channels of trade to the same class of customers. *Cai v. Diamond Hong*, 127 USPQ2d at 1801 ("With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and 'presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods....") (citing

In re Viterra Inc., 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); *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).

Accordingly, the *DuPont* factors regarding the similarity of the goods, as well as the trade channels and customers, strongly favor a finding of likelihood of confusion.

B. Similarity of the Marks

It is well settled that marks are compared in their entirety for similarities in 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) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F. 3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); *In re Viterra*, 101 USPQ2d at 1908. Where the goods of applicant and registrant are in-part identical, as they are in this case, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. *In re Viterra*, 101 USPQ2d at 1908; *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire

marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also 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.”). However, 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. *In re Nat'l Data*, 224 USPQ at 751.

Looking at the marks in their entireties, Applicant’s mark SUNSENTIALS and the cited registered mark FUN SUN ESSENTIALS are similar in appearance and sound. Applicant’s mark SUNSENTIALS is comprised of the word “sun” followed by the term “-sentials.” Although there is a slight difference in the sound and appearance of the marks stemming from the lack of the “es-” preceding the shortened term “- sentials” in Applicant’s mark versus Registrant’s mark FUN SUN ESSENTIALS, it does not differentiate the meaning of the marks. Only when Applicant’s and Registrant’s marks are compared in a side-by-side comparison, does the slightly different spelling of “SUNSENTIALS” and “FUN SUN ESSENTIALS” become apparent.

Applicant cites *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (CROSSOVER for bras held not likely to be confused with CROSSOVER for ladies’ sportswear), *In re British Bulldog, Ltd.*, and *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies’ and children’s underwear held not likely

to be confused with BOTTOMS UP men's clothing)⁶ in support of its argument that the existence of distinguishing elements in pronunciation and appearance of the marks are sufficient to avoid likelihood of confusion. But those cases involved disparate goods; they are not applicable to this case, where the marks are used on in-part identical goods.

Comparing the marks, the term SUNSENTIALS is essentially a telescoped version of SUN ESSENTIALS, the last two words in Registrant's mark. *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014) ("Therefore consumers [of Applicant's beauty information services] would likely understand the mark [BEAUTV] to represent a 'telescoped' form of 'BEAUTY TV.'").

Applicant contends that purchasers would not confuse the two marks because Applicant's mark, SUNSENTIALS, is presented as a single word while Registrant's mark, FUN SUN ESSENTIALS, is comprised of three words.⁷ The absence of spaces in Applicant's mark SUNSENTIALS, and the presence of spaces in Registrant's mark FUN SUN ESSENTIALS, is of little significance in our comparison of the marks. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016) ("the absence of a space in Applicant's mark MINIMELTS does not meaningfully distinguish it from Opposer's [MINI MELTS] mark"); *Mag Instrument Inc. v. Brinkman Corp.*, 96 UPSQ2d 1701, 1714 (TTAB 2010) ("presence or absence of a space before STAR does very little, if anything, to distinguish the two marks

⁶ See Applicant's Appeal Brf. p. 5 (7 TTABVUE 9).

⁷ Applicant's Appeal Brf. p. 4 (7 TTABVUE 8).

[MAXSTAR versus MAG STAR]”); *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1025 (TTAB 2009) (“the spaces that respondent places between the words [DESIGNED TO SELL] do not create a distinct commercial impression from petitioner’s presentation of his mark [DESIGNED2SELL] as one word”); *Seaguard Corp. v. Seaward Int’l, Inc.*, 223 USPQ 48, 51 (TTAB 1984) (“[T]he marks ‘SEAGUARD’ and ‘SEA GUARD’ are, in contemplation of law, identical.” (internal citation omitted)). The spaces in the marks are an insignificant difference that is not likely to be noticed or remembered by customers when they encounter these marks at separate times.

The issue is not whether the people will confuse the marks, but whether — taking account of the identity of the goods and other factors — the marks will confuse the people into believing that the goods come from or are associated with the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558, 559 (CCPA 1972). Under the first *du Pont* factor, we therefore consider whether and to what degree the marks are similar.

Applicant argues that the Examining Attorney disregarded the term “FUN” in the cited mark, which helps to create its distinctive visual, aural, and commercial impression. Contrary to Applicant’s argument, the addition of the initial word “FUN” in Registrant’s mark does not alter the meaning or commercial impression of its mark, or otherwise diminish its similarity with Applicant’s mark; both marks suggest that sunglasses and related goods are essential on sunny days. In the context of Registrant’s mark, “FUN” is suggestive, reminding consumers that its sunglasses are

essential wear when having “fun” in the sun. The meaning of “fun” in relation to a characteristic of decorative wear such as sunglasses, is consistent with the overall commercial impression formed by Applicant’s and Registrant’s marks. Thus, the inclusion of the word “FUN” in Registrant’s mark is not sufficiently distinctive to differentiate the marks.

When comparing marks, the test is not whether the marks can be distinguished in 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. *Cai v. Diamond Hong*, 127 USPQ2d at 1801 (citing *Coach Servs. v. Triumph Learning*, 101 USPQ2d at 1721); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Bay State Brewing*, 117 USPQ2d at 1960 (citing *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)); *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1430 (TTAB 2013)).

To the extent that purchasers notice the differences in the marks, they are likely to believe that Registrant’s mark is a version of Applicant’s mark or that it represents a product line extension. “Even those purchasers who are fully aware of the specific differences between the marks may well believe, because of the similarities between them, that the two marks are simply variants of one another, used by a single

producer to identify and distinguish companion lines of products.” *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 485 (TTAB 1985). Therefore, the marks SUNSENTIALS and FUN SUN ESSENTIALS are similar in appearance, sound, connotation, and commercial impression such that the inclusion of the word “FUN” in Registrant’s mark does not avoid the likelihood of confusion between the marks. This factor supports a finding of likelihood of confusion.

C. Number and Nature of Similar Marks in Use on Similar Goods

Under the sixth *DuPont* factor, we assess the extent to which the cited mark’s strength may be attenuated by “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567; *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”). For likelihood of confusion purposes, a mark’s strength “varies along a spectrum from very strong to very weak.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017).

Evidence of extensive registration and use of a term by others for similar goods can be powerful evidence of the term’s weakness. *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) (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)). If the evidence establishes that the consuming public is exposed to widespread third-party use of similar marks for similar goods, it “is relevant to show that a mark is relatively weak

and entitled to only a narrow scope of protection.” *Palm Bay Imps. v. Veuve Clicquot*, 73 USPQ2d at 1693. However, Applicant points to no evidence of third-party actual use, and instead relies only on third-party registrations. Third-party registration evidence goes not to the commercial strength of Registrant’s mark, but rather its conceptual strength. That is, “[u]se evidence may reflect commercial weakness, while third-party registration evidence that does not equate to proof of third-party use may bear on conceptual weakness if a term is commonly registered for similar goods or services.” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017) (citing *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976)). *See also In re Guild Mortg. Co.*, 2020 USPQ2d 10279 *3 (TTAB 2020) (“[E]vidence of third-party registrations is relevant to ‘show the sense in which . . . a mark is used in ordinary parlance.’”).

According to Applicant, the terms “SUN” or “ESSENTIAL” and variations thereof are so commonly used and weak that no one party is entitled to their exclusive use: “The only conclusion to be drawn from this coexistence is that the cited mark is weak and entitled to a narrow scope of protection.”⁸

⁸ See Applicant’s Appeal Brf. pp. 3-5 (7 TTABVUE 9-11).

In support of the cited mark’s alleged weakness, Applicant submits twelve third-party registrations⁹ arguing that third parties have registered marks containing “SUN” or “ESSENTIAL” for similar goods¹⁰:

| Registration No. | Mark | Goods or Services |
|------------------|---------------------|--|
| 2760605 | SUN GUARD | Spectacles to be worn on the face of people having tinted lenses that absorb U-V radiation so that less U-V radiation impinges on the eyes of the wearer, namely, sunglasses |
| 2824519 | SUN COVERS | Eye wear, namely eyeglasses and sunglasses |
| 3387565 | SUN TRENDS | Eyeglasses; Sunglasses |
| 3609309 | SUN VALLEY SHADES | Sunglasses |
| 3955674 | SUN REACTOR | Eyewear; Reading glasses; Sunglasses |
| 4792411 | SUN BUDDIES | Sunglasses |
| 4826238 | SUN COAST ORIGINALS | Eyewear, namely, sunglasses and eyeglasses; cases for eyeglasses and sunglasses and sunglass chains and cords |

⁹ This does not include two unregistered marks, Application Serial Nos. 87859864 for SUN SQUAD which is pending and 88061710 for ESSENTIAL GEAR which was abandoned October 14, 2019; and Registration No. 3576981 for ESSENTIALS BY A · B · S which was cancelled September 20, 2019. *See* Applicant’s October 8, 2019 Request for Reconsideration. A cancelled registration is evidence only that the registration issued, while a pending application is evidence only that it was filed; the cancelled registration, pending and abandoned applications are not evidence of use of the marks. *See, e.g., In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018); *Kemi Organics, LLC v. Gupta*, 126 USPQ2d 1601, 1606 (TTAB 2018); *Sunnen Prods. Co. v. Sunex Int’l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987) (an expired or cancelled registration is evidence of nothing but the fact that it once issued). Accordingly, we give those applications and registration no consideration.

¹⁰ *See* October 8, 2019 Request for Reconsideration and Exhibit B at TSDR 10-11, 13-29.

| | | |
|---------|--------------------------|--|
| 5370206 | SUN SEEKER | Sunglasses |
| 4750424 | ESSENTIAL MIX | Sunglasses; among other goods |
| 5104087 | THE ESSENTIAL P5 | Custom imprinting of promotional products, including sunglasses, among other goods |
| 5104090 | THE ESSENTIAL PERFECT 10 | Custom imprinting of promotional products, including sunglasses, among other goods |
| 5852443 | ESSENTIAL BLUE SERIES | Optical goods, namely, sunglass lenses, among other goods |

Applicant’s reliance on these twelve third-party registrations, covering eight registered marks containing “Sun,” and four registered marks that contain “Essential,” is misplaced. These third-party registrations are entitled to little, if any, weight given the differences in their use of “SUN” and “ESSENTIAL,” and in their use of additional, non-descriptive terms rendering different commercial impressions.

Unlike cases where extensive evidence of third-party registered marks were found to be “powerful on its face” inasmuch as “a considerable number of third parties use [of] similar marks was shown,” *Juice Generation*, 115 USPQ2d at 1674, Applicant submits only a limited number of third-party registrations for different marks, well short of the volume of evidence found convincing in *Juice Generation* and *Jack Wolfskin*, 116 USPQ2d at 1136. Moreover, the third-party registrations, while not probative of third-party use, reveal that the cited mark is the only registered mark other than Applicant’s mark which combines “Sun” with a name that is similar to “Essential” i.e., “-sentials.” In view of the foregoing, these third-party registrations

do not affect the meaning of the cited mark, nor do they support a finding that the cited mark is weak or otherwise entitled to a narrow scope of protection.

On this record, Registrant's mark FUN SUN ESSENTIALS is not so weak as to permit the registration of Applicant's very similar mark SUNSENTIALS, which shares the identical first word "SUN" followed by "-SENTIALS," for use on identical and related goods. Moreover, even if marks containing the terms "SUN" and "ESSENTIALS" are deemed to be weak, marks deemed "weak" are still entitled to protection against registration by a subsequent user of a similar mark for identical-in-part and closely related goods. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974); *In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1676 (TTAB 2018) (citing *China Healthways Inst., Inc. v. Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007)); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1246 (TTAB 2010).

Under the sixth *DuPont* factor, the third-party registration evidence does not support a finding that the cited mark is so weak or otherwise entitled to such a narrow scope of protection that Applicant's mark is not likely to cause confusion.

D. Conclusion

Applicant's mark, SUNSENTIALS, and Registrant's mark, FUN SUN ESSENTIALS, are similar in part with respect to appearance and sound, and highly similar with respect to meaning and commercial impression; both marks feature "SUN" followed by "-SENTIAL," or "ESSENTIAL;" the addition of "FUN" does not serve to distinguish Registrant's mark from Applicant's mark. Given that Applicant's

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and Registrant's goods are identical-in-part, the wording SUNSENTIALS and FUN SUN ESSENTIALS as used in each mark yields a similar commercial impression. Moreover, "[w]hen marks would appear on virtually identical goods . . . , as is the case here, the degree of similarity necessary to support a conclusion of likely confusion declines." *In re Morinaga Nyugyo*, 120 USPQ2d 1738, 1740-41 (TTAB 2016); *In re Max Capital Grp.*, 93 USPQ2d at 1248 (citing *Century 21 v. Century Life*, 23 USPQ2d at 1700). Therefore, we find a likelihood of confusion between Applicant's mark and the cited mark for the identified goods.

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